





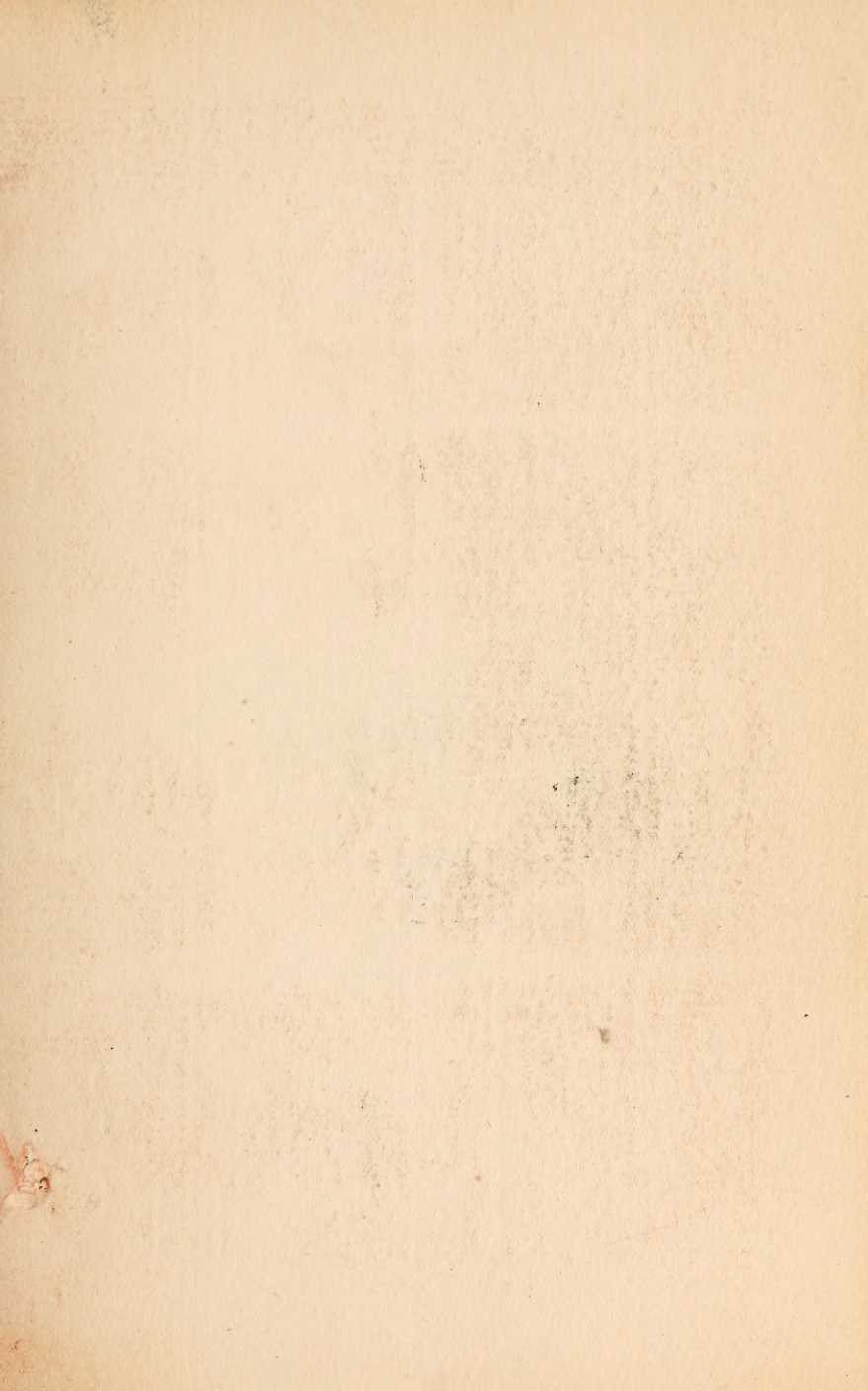


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# SPEECH

OF

# SENATOR FORAKER

AT

## Chillicothe, Ohio,

SEPTEMBER 19, 1903.

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FELLOW CITIZENS :—

We are approaching another election. It will be one of great importance.

We are to elect a Governor and other important State officials, and a Legislature that will choose a United States Senator.

It would be enough to make this election important if nothing more were involved than merely a choice of men for these responsible posts of duty. But more important by far than the question of what man shall hold any one of these places is the great broad question of a choice between political parties. Is Ohio to go Democratic or Republican is what everybody wants to know, not only here but all over the country. What we do this year will indicate what we are likely to do next year. A vote for Herrick now means a vote for Roosevelt then. Herrick's election will mean that this great central commonwealth with its vast influence upon the politics of the country, approves and supports the policies of the Republican party now, in the election of a

Governor, and intends to do the same thing next year in the election of a President.

The situation thus resolves itself into the question whether we desire to continue present conditions or change them. If the question at issue could be voted upon in this simple form Colonel Herrick would be elected by a well nigh unanimous vote, for, so far as State affairs are concerned, there is universal satisfaction.

#### GOVERNOR NASH.

Under the administration of Governor Nash the last dollar of our State debt has been paid. Our public institutions have been conducted with economy and efficiency and our taxes for State purposes have been reduced to the lowest rate that we have ever known.

#### NATIONAL AFFAIRS.

There may not be the same unanimity with respect to national affairs, but there should be, for all must concede that under Republican policies we are enjoying the most satisfactory results. We are having unexampled prosperity. We have never before experienced such universal business activity. It extends to all occupations. It pervades all sections and dispenses its rich rewards to all classes of people. Our revenues were never so ample, nor ever so little burdensome. The American name was never so honored throughout the world. Our wealth and our strength are everywhere acknowledged and our diplomacy is everywhere successful. It has commanded the good will and excited the admiration of all the peoples of the earth.

#### KEEP THE DEMOCRATIC PARTY OUT OF POWER.

It is not only our privilege, but our duty, to continue all this. And the first step in the discharge of this duty is to keep the Democratic party out of power.

As at present organized and inspired, it is not fit to be in power.

To be a fit agency for the execution of the people's will



a party must have not only acceptable principles, but also a common belief and a common purpose among its members. There never was a time when our Democratic friends had acceptable principles, but there was a time when they had these other attributes, but that time was a long time ago.

To-day they have no common agreement on any proposition except only that they are Democrats. They cannot tell why, nor can they even agree what the term "Democrat" implies. On all important subjects and policies they have the sharpest and most irreconcilable differences. They are more hostile toward each other than they are toward the Republicans. There is no hatred in the politics of our country like that which fills the hearts of the Free Silver and Gold Democrats toward each other. The Free Silver men charge that they were buncoed out of a victory in 1896 by the defection of the Gold Democrats, and the Gold Democrats charge that their party was discredited and disgraced by the Free Silver men, who gained control of it in that year.

MR. JOHN H. CLARKE.

There is but one single exception recorded to this wholesale mutual denunciation and that is the case of Mr. John H. Clarke, who has been ostentatiously pardoned by Mr. Bryan for the offense of being a Gold Democrat in 1896, on the ground that he didn't know any better. This theory finds confirmation in the fact that Mr. Clarke is willing in the bright light of the present to become a candidate for United States Senator on a platform that proclaims all the heresies against which he then, without the light of subsequent experience, so vigorously inveighed.

He has announced that he desires to have a joint debate. He should be accommodated, but the debate should be between John H. Clarke of 1903 and John H. Clarke of 1896. I don't know of anybody else who has time to debate with him. But I do know that it will keep John H. Clarke of 1903 busy until election day has come and gone to answer

John H. Clarke of 1896. For John H. Clarke of 1896, notwithstanding what Mr. Bryan says about his lack of knowledge, was at that time a very able and vigorous man, who said in a vigorous and forcible way a great many things that nobody has ever yet answered or ever will answer.

But however all that may be, the mutual fault findings of our Democratic friends have grown more pronounced and more bitter as time has passed, until the chasm that separates them has become so wide and deep that co-operation is impossible for years to come, whether they are in power or out.

So long as they are out of power no harm is done, but if they should be restored to power, such dissensions would of themselves paralyze all their efforts and visit upon the country again the disastrous experiences to which we were subjected in 1893, when, for the same reason, they found themselves unable to legislate about the tariff and because of that inability and their blundering errors lost the confidence of the business interests and plunged the whole country into a disastrous and long continued panic.

It would be much worse now than it was then. In the first place, our prosperity is greater and we have more to lose. But then there was only the one question of the tariff about which they were deadlocked, while now their irreconcilable differences embrace not only the tariff, but the coinage of money, the currency, expansion, and every other question with which we have to deal. They disagree upon every important subject.

And yet this paralysis, with its consequent train of disasters, great as they would be, would be far less injurious to the country than an application of such principles as are announced in the platform recently adopted by the Democrats of Ohio.

In that document they denounce almost everything connected with the administration of our public affairs, but



especially the tariff, what they term "Colonialism," and government by injunction.

If they could enforce only these declarations we would have at once a free trade revision of the duties now levied and collected on imports from foreign countries, an abandonment of Porto Rico and the Philippines, and the courts would be denied the power in certain cases to issue the writ of injunction, in open violation of the Constitution.

All these propositions are unwise, and some of them are unpatriotic and even worse.

#### TARIFF.

The best discussion of the tariff is our practical experience. From the beginning of our government down to the present time we have alternately tried protection and free trade, or tariff for revenue only policies, and invariably with the result that we have always had prosperity under protection and adversity under free trade, or any approximation toward free trade that lowered duties below the protection point.

We need go back no further in this study than the last Democratic administration. Under the McKinley law of 1890 the country was prosperous; we were developing our resources, multiplying our industries, employing our labor, increasing our exports, and adding to the wealth and happiness of all classes.

The Democratic party came into power, repealed the McKinley law and enacted the Wilson-Gorman law to take its place. The Wilson-Gorman law was not a free trade measure, nor was it only a tariff for revenue measure. It carried a good deal of protection; in fact it carried so much protection that President Cleveland refused to sign it, and it went into effect without his approval. But it fell short of adequate protection to many of the leading industries of the country, and as a result, they were compelled to suspend, development stopped, labor was turned out of employment

and the whole country was driven into panic, poverty and distress. Our revenues fell off until they became insufficient to meet current obligations, and the Government was compelled in a time of profound peace to issue bonds to supply the funds necessary therefor. The picture this great, rich country presented under that Democratic administration was full of distress and humiliation. Who that passed through that experience will ever forget it, or ever be willing to return to it? But that is exactly what the Democratic platform adopted in Ohio this year proposes. If there were nothing more involved than this one proposition we should indignantly and overwhelmingly reject the proposal, which, under all the circumstances, is but a piece of insulting effrontery.

#### COLONIALISM.

The treaty of peace with Spain was the work of Democrats as well as Republicans. Without their help it could not have been ratified. It was not a party, but an American measure. It was a solemn, national compact. It was entered into in the presence of all the nations as witnesses. It imposed upon us sacred duties and grave responsibilities. When that treaty took effect expansion became an accomplished fact. Since that moment the question has been not whether we should expand, but whether we shall contract; not whether we shall go forward, but whether we shall go backward.

It is a conclusive answer to the proposition to go backward that, without acting like a nation of poltroons, we could not if we would.

It is easy to flippantly talk about giving the Filipinos their independence, but aside from everything else that stands in the way, such suggestions are impracticable and impossible, if we are to honorably discharge the obligations we have assumed. All who are informed on the subject concede that Porto Rico and the Philippines are not only



ours by absolute title, but that they are ours to remain, in any event, for an indefinite number of years to come, if not forever, because it will be an indefinite number of years hence before we can have discharged all the duties and responsibilities we have there undertaken.

It is our duty, therefore, if we are to remain there so long to give them, at least in the meanwhile, a political status, and provide for them some kind of suitable government.

We can make them an integral part of the United States and provide by act of Congress that the Constitution of the United States shall be their organic law ; and we can make them citizens of the United States, if we so desire ; or, if we do not so desire, we can withhold these conditions and qualities. We have this inherent power under the Constitution, but, in addition, the treaty expressly confers all this power on Congress.

The Republican party, after careful consideration and thorough discussion, reached the conclusion that under the Constitution of the United States we have power to acquire, hold and govern territory without making it a part of the United States ; and that in governing such territory, Congress is at liberty to provide such institutions of government and to enact such legislation as the necessities of each particular case may seem to require ; and the Supreme Court of the United States has sustained this view.

There is no question open for discussion therefore, as to the acquisition of these islands, for they have been acquired ; neither is there room for any talk or discussion about giving them independence, for that is impossible, in view of the obligations we have assumed, for years to come ; nor is there any question open for debate as to our power to govern them, as we are governing them, for the Supreme Court has held that we have the power to do all we have done, or are proposing to do.

The sole question for discussion is whether or not we have acted wisely in governing as we have.

We have not extended to them the Constitution of the United States. But almost every honest man who has investigated the subject has reached the conclusion that it would have been a most unfortunate mistake for them as well as for us if we had.

That instrument, so admirable for the people of the United States, was not framed for the Malay tribes of the Philippines, and it will be a long time, even under our tutelage, before it will fit their requirements.

Our system of jurisprudence, with its remedial writs and trial by jury, is agreeable to us, but it will require years of preparation and assimilation to make it so to them.

They have not been made citizens of the United States, and have not been given representation in Congress, but who that has common sense will, upon full knowledge, complain of that? The truth is, we have all been seriously admonished that we should not make haste in conferring the quality of citizenship on people who have not been accustomed to our institutions, and who are not inspired with the spirit of Americanism.

But while they have not been made citizens of the United States, and while the Constitution has not been applied to them as a whole, yet all the important provisions of the Bill of Rights have been embodied in the government we have established for them; both that of the so-called Taft Commission and that enacted by Congress, and all we have done there, in addition to suppressing insurrection, has been in strict accord with these guarantees of personal liberty and property rights.

Every peaceable Filipino has been at all times, since our occupation commenced, under our protection, as well as subject to our authority; and, as a result, in the full enjoyment of as liberal and generous a government as we have



ever given to the people of any territory of the United States ; a more liberal government, in fact, than the people of New Mexico and Arizona and Alaska and Hawaii are living under to-day.

There has been no oppression and no denial of any right or privilege that could be granted consistently with law and order. Our efforts have been zealously put forth to give them peace, prosperity and happiness. If we are to retain them, as we must, for at least years to come, we must govern them, and if we must govern them it will be difficult for anyone here or there to justly criticise anything we have yet done in that behalf. Day by day good results are becoming more and more manifest, and the time is not far distant when men will wonder why there should ever have been opposition to our policies, for time will show that we are engaged in a noble and patriotic work of humanity and civilization, that will be crowned with such success that the chapter which records our achievements will be one of the brightest in American history. That man and that party are to be pitied who will be so unfortunate as to have no right to claim any share in the great credit that history and posterity will ascribe to those who are doing this work.

#### GOVERNMENT BY INJUNCTION.

The third special denunciation of the Democratic platform to which I have called attention is of what it terms government by injunction.

This phrase expresses a very dangerous thought.

All the judicial power of our Government is vested by the Constitution in one Supreme Court and such inferior courts as Congress shall from time to time ordain and establish. The Constitution thus imposes upon Congress the duty of providing for the exercise by suitable tribunals of all the judicial power that belongs to the government. For Congress in the distribution of judicial power to fail or re-

fuse to invest some court, somewhere, with the equitable power of injunction, would be to violate the Constitution and commit an act of revolution. For Congress to invest certain courts with that power, as has been done, and then divest them of it in whole or in part, as now proposed, without at the same time investing some other court with such power, would be equally a violation of the Constitution and an act of revolution.

But aside from all this, as a mere matter of policy, the proposition is the very essence of unwisdom.

The courts of our country have ever been the conservative and preservative force in our Government. They are the one department unmoved by the excitements and prejudices of the passing hour. No man is so humble but that, if he imagines himself aggrieved, no matter by whom, he does not know that in and through the courts his wrongs may be redressed, and who does not have in that fact an ever present assurance of the protection of Government for his life, liberty and property. There have no doubt been miscarriages of justice in the past, and there no doubt will be miscarriages of justice in the future, for nothing that is dependent upon human agency can be at all times perfect in its operation. But, taken as a whole, our judges have always met the just expectations of our people, and in their independence, their honor, and their fearlessness in the discharge of their duties, we have ever found a comforting guarantee of the permanency of our institutions. No greater calamity could befall us than the serious impairment of the usefulness of this department of our Government. To deprive our courts of any part of their rightful jurisdiction would be at least a step in that direction. Only baneful results could follow. It might be even the beginning of the end of the Republic, for men will not long maintain a government that does not sustain a free and untrammelled judiciary. All such propositions are not only revolutionary,



but they are also anarchistic and must be dealt with accordingly.

There is another feature of this proposition that makes it still more reprehensible and inexcusable, and that is the demagoguery of which it is born. It is intended to capture the vote of the labor unions. On that account it is anything but a compliment to the intelligence and patriotism of laboring men. The true friend of labor unions is the man who will tell them the truth, and not the demagogue, who, prating of friendship holds out false promises and elusive hopes of something that is unattainable. Every laboring man should know that naturally all men are his friends. In some form or other all must labor in this world, and humanity sympathizes with humanity the world over. But there are certain limitations in all human affairs, fixed in the very nature of things, beyond which sympathies will not go, no matter in whose behalf they may be invoked. This is especially true as to all Governmental affairs, and accordingly we find in the nature of our institutions natural limitations upon legislative remedies. Doubtless there have been instances of an erroneous use, or even an abuse of the writ of injunction, but the American people will not strip their courts of their wholesome and beneficent power to restrain threatened violations of personal and property rights to prevent the recurrence of such occasional wrongs. To do so would be a blow at vital principles. It is far better to leave the parties affected by erroneous judgments that may be given, to find their relief in the higher courts to which they may appeal, requiring us all alike to loyally abide whatever final judgment may be ultimately rendered. For no matter what may be said to the contrary, we all know that our courts honestly strive to administer equal and exact justice; and all should know that they who would strip them of their legitimate power place themselves in a bad light before the American people. When men find that they have

purposes which are in conflict with the law as administered by our courts of equity, the best thing they can do is to abandon them, for it may be safely assumed that what an American court of equity will not allow should not be done. And the worst thing men can do, who find themselves in such a situation, is to join the Democratic party and attempt to make the judiciary of our country the football of party politics. For nothing is more certain than that the laws of this country and the courts that administer them will be upheld, and the political party that does not recognize this fact is unworthy to be entrusted with power.

#### FUTURE PROBLEMS.

But there are other reasons why the Democratic party should be defeated. We must deal in the near future with very important problems. There is a constantly increasing demand for legislation that will make our currency better adapted to the changing conditions of trade. Legislation of this kind was proposed at the last session of Congress, but was not then acted upon. Some such legislation will, doubtless, be proposed in the next Congress, and, if the demands of the country are met, some kind of legislation on this subject will be enacted.

There are difficulties and complications yet to be met and overcome in connection with the construction of an Isthmian Canal ; in time it will, no doubt, be necessary to revise our tariff schedules ; and we are likely to have constantly arising new and unforeseen questions of difficult character and grave importance in connection with our insular possessions. All these subjects will require the highest quality of statesmanship and patriotism. Does any unbiased man honestly believe that the Democratic party, as to-day organized and inspired, would be equal to such a task ? Men cannot do right unless their beliefs are right. They cannot accomplish great deeds unless their hearts are



in their work. Can any man suggest anything more calamitous than the Democratic party in power, and, under the leadership of such men as W. J. Bryan and Tom L. Johnson, legislating about the currency, the banking system, the tariff, our insular possessions, or any other important subject that concerns either our prosperity or our honor?

The mere suggestion of such a possibility should be enough to make it an impossibility. For not unless we desire to reverse all our policies should we think of entrusting the Democratic party with power.

#### COLONEL HERRICK.

Instead of voting for a change Ohio should "stand pat". The election of Colonel Herrick will not only insure a continuation of the wise and satisfactory administration of Governor Nash, but it will place at the head of our state one of the ablest and most deserving of our fellow citizens, who has ever been a stanch and faithful representative of the highest and best type of Republicanism; and a Republican Legislature will insure to the nation for another term the invaluable services of Senator Hanna.

#### SENATOR HANNA.

We have never had a representative in the United States Senate who has better earned this honor. He has rendered there the most conspicuous services. Not Ohio alone, but the whole nation is indebted to him for what he has done. He is a great leader, not only in the councils of his party, but also in the legislation and statesmanship of his time. He is broadminded, patriotic and thoroughly American. He stands at all times for the best interests of his country, and is ever ready and able to efficiently uphold his cause. His defeat would be a national disappointment and a state humiliation.

## PRESIDENT ROOSEVELT.

With victory this year for Herrick and Hanna, Ohio will then be ready to head the column for President Roosevelt next year.

We are fortunate in having such a man at the head of the nation. His learning, his experience, his temperament, his patriotism, his courage, his probity, his strenuous zeal and energy all combine to make him an ideal President. In the execution of his high office he has exhibited such striking ability and fidelity that he has inspired the American people with both pride and confidence, while at the same time he has excited the admiration and good will of all the nations of the earth. It is fit cause for congratulation that our victory in Ohio this year will help insure his triumph next year.







STENOGRAPHIC REPORT  
OF THE  
SPEECH  
OF  
SENATOR FORAKER  
DELIVERED AT  
Chillicothe, Ohio,  
SEPTEMBER 19, 1903.

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In introducing Senator Foraker, the Chairman of the meeting, Governor George K. Nash, said :

The Republicans of Ohio admire and love Joseph B. Foraker. He was a gallant soldier in the days of peril from 1861 to 1865. Since that time he has been one of the staunchest advocates of the principles which we love. He can stir the hearts of the Republicans of Ohio, as no other man can. I now take pleasure in introducing Senator Foraker. (Long continued applause, an old comrade insisting on shaking hands with the speaker before allowing him to proceed.)

Hon. Joseph B. Foraker then said :

Mr. Chairman and Fellow-Citizens: It was indeed a happy thought of the State Republican Executive Committee that fixed the campaign opening at Chillicothe. I am in favor of Chillicothe. It not only has a reputation for hospitality, but I can assure Mr. Douglas and the other good citizens of the city of Chillicothe that it has abundantly sustained that reputation. (Applause.) I have been well entertained; so has everybody else, and so well entertained that I am ready now to promise that I will vote to



have the convention here next year, and to have as many more openings here as you may desire to have. (Applause.)

But there is another and I think a better thought that comes into my mind as to Chillicothe. The Republican party, as it is to-day organized, is the legitimate successor of the followers of Alexander Hamilton. Our political opponents so charge, and we claim it. Just one hundred years ago, as our next Governor reminded us, in this City of Chillicothe, our first constitution was adopted and the way was prepared for the admission of Ohio into the Union as one of the sister states. That matter was hurried up a little. Under the ordinance of 1787 we were not entitled to admission, as a matter of right, until we had sixty thousand free inhabitants, but we were admitted when we had only forty-two thousand. The majority of the men who assembled here at that time and drafted a constitution, the first one Ohio had, and then secured our admission to the Union, were the followers of Thomas Jefferson. They did not agree as to political doctrines with the followers of Alexander Hamilton. Jefferson had been elected by the House of Representatives, the vote of the electoral college in 1800 having been a tie. Jefferson and his followers recognized that if he was to be re-elected in 1804, as he wanted to be and was, he must strengthen his column, and they looked longingly to this Scioto Valley, where Nathaniel Massie and Thomas Worthington and Edward Tiffin, all Virginians and followers of Jefferson, had located, to see if they could not make a new state in time to give Jefferson three more electoral votes in 1804. They thought they could, and they did. They "understood their business." (Laughter and applause.) They got together, and here in the City of Chillicothe they framed a constitution. How long do you think they were about it? Now-a-days, when we frame a state constitution, it takes from six months to a year. They did it in just twenty-nine days, and then, those

believers in the Declaration of Independence, about which our Democratic friends are now having so much to say, especially that declaration which says that all just powers of government are derived from the consent of the governed, those men I say, having framed that constitution, seemed to forget about the Declaration of Independence and the "consent of the governed," and without stopping to submit it to a vote of the people, who were to be governed by it, simply "promulgated" it. Thus they said in effect "we are the delegates to this constitutional convention, we have framed an organic law, and it shall be the organic law of the people of Ohio, whether they are willing it shall be or not." Jeffersonian Democrats were not troubled about the consent of the governed then. They waited one hundred years, until we undertook to govern the brown men over in the Philippine Islands, before they got troubled on that point. But what came into my mind when your Chairman referred to Chillicothe, was that this was the spot where our forefathers, the men who first advocated the ideas of the Republican Party, lost the battle one hundred years ago. Old Jacob Burnet and Arthur St. Clair, and their associates, the representatives of the Hamiltonian ideas, were overwhelmed by that movement, and our first constitution was adopted, and we were admitted to the Union in time to vote for Jefferson's re-election. But the ideas that those men who were then defeated represented, have lived, and grandly prospered, as our Country has, in the one hundred years that have since passed. (Applause).

To-day, we, the party representing the ideas of Hamilton come to Chillicothe. We do not come defeated. (Applause.) I don't suppose we ever will be defeated again. (Applause.) We come triumphant, dominant in State and Nation alike, and dominant because the ideas of Alexander Hamilton and the ideas of the Republican party alike are that this Union of States creates a great American Nation; that the

Constitution of the United States was made, not by the States, but by the people of the United States, and that as to the powers by it granted to the general government, it is supreme over States and people alike. (Applause.) That is where we stood when you and I—this comrade who greeted me a moment ago—marched down to Dixie in the old 89th Ohio. We went down there to fight for that idea. We did not go down there to kill anybody—unless they got in the way and had to be. (Applause.) We had no ill will against anybody. We fought against the people of the South because they belonged to us, and we thought so much of them we would not let them get away. (Applause.) We wanted them to stay in this Union, where God and the Fathers had put them, and let us govern it awhile to show them what a great blessing it is. (Cheers.) We have been governing it almost ever since, and you have the results, as they have been already stated here to-day. Universal prosperity, universal honor, universal happiness, never so great in all the history of this great country. (Applause.)

Now we come here to-day representing these same ideas, dominant as I have said, to open another campaign, and our Democratic friends tell us “Remember, now, this is just a State campaign. You must not talk about anything else.”

Well, now, my fellow citizens, it is proper to remind you that this is not only a State but also a National campaign upon which we are entering. We are not only going to elect Myron T. Herrick by more than one hundred thousand (applause), and if he does not have more than one hundred thousand, I shall think we are defeated (applause), but we are going to elect Marcus A. Hanna also. (Cheering.) That is why I say it is National as well as State. He is always National. (Applause.)

I did not come here intending to spend any time on State affairs, but if I had I would pass over that part of my speech, since I have heard Colonel Herrick, for he has



convinced us all that he is able to take care of Tom Johnson or anybody else. (Cheers). I listened attentively to that speech. I have heard a great many. I count myself a pretty good judge. (Laughter). I know when a man touches the button. (Renewed laughter). Tom Johnson will have to get busy, and get busy quick if he answers that speech. (Renewed laughter). A voice: "Give 'em hell, Senator". (At this point the speaker was interrupted by uproarious applause and long continued laughter.)

Continuing Senator Foraker said: You remind me of dear old Granville Moody. He was, you know, a Methodist preacher, and a good one. He belonged to the Church Militant in every sense of the word, and was such a good old patriot that he raised a regiment and went as its Colonel down to the front, where he won a great reputation as a gallant soldier. At the battle of Stone River, his regiment was at one time hard pressed. Being a preacher, and having ever the fear of the Lord before him, he could not do any swearing, no matter how excited he might become, but his adjutant was not quite so sensitive on that point. He belonged to a different church, and when the moment was critical and the shells and bullets were flying thick and fast, and they were afraid the boys might break, to encourage them, the adjutant rode up and down the line crying out, like the man who has interrupted me, "Give 'em hell, boys; Give 'em hell, boys," while old Granville each time would cry out, "Do what the adjutant tells you, boys; Do what the adjutant tells you, boys." (Great laughter and applause.) That may be the adjutant over there in the audience, and if so, in the language of old Granville, I say to you all when election day comes "Do what the adjutant tells you, boys." (Applause and laughter.)

But to resume, we are in this kind of a campaign. Johnson wants to be governor over such a man as Myron T. Herrick. Isn't that awful? (Laughter.) Fellow citizens,

he will never see it. (Applause and laughter.) And John H. Clarke wants to be United States Senator. I do not want to say anything bad about John H. Clarke. It is not necessary. He has said worse things of himself than I would think of saying about him. (Laughter and applause). I notice that he wants to have a joint debate with Senator Hanna. Well, I do not know what Senator Hanna is going to say to him, but surely he ought to be accommodated. But the discussion ought to be confined to a debate between John H. Clarke of 1903 and John H. Clarke of 1896. (Applause.) You will remember that he bolted Bryan in '96. Bryan, however, has pardoned him. But on what ground? On the ground that he did not know any better. (Great laughter and applause). That is what Bryan said. He said there were two classes of bolters, one the Cleveland<sup>1</sup> people who knew just what they were doing, and the other, of which John H. Clarke is a representative, who did not know the evil and far reaching consequences of defeating William Jennings Bryan. (Applause and laughter.)

Now John H. Clarke of 1896 said a great many things that it will be very hard for John H. Clarke of 1903 to answer, whether he lacked knowledge or not. He had a way of saying things that were troublesome to Bryan then, and will be troublesome to himself now if he undertakes to have a debate with himself.

But now Mr. Bryan has delivered himself again. He is always going off about something. This time he gives seven reasons why Bryan Democrats should vote for Clarke. I cut this slip out of the *Cincinnati Enquirer* this morning, so of course it is the gospel truth. (Laughter.)

Speaking of the *Enquirer*, makes me think of something else. I can stand everything else in connection with the approaching election better than I can the awful woe and distress that I foresee will possess the soul of John R.

McLean when he hears on election night that Johnson, Clarke, and all the rest have suffered crushing defeat. (Laughter and cheers.)

I don't want to read all these seven reasons. One of them is enough. I do not care for the others.

I remember when I was a boy hearing a story told by a man who had been a passenger on a Mississippi steamboat from Cincinnati to New Orleans. He said that at Natchez a plain looking old fellow, who looked like he might have a plantation out somewhere back from the river and a pocket full of money, got on board. He looked like he had never traveled any before. There were some gamblers aboard who wanted to get up a game. They picked the old man out for an easy mark. They approached him and requested him to join them, but he said he could not do it, and refused to entertain the proposition. They pressed him, finally wanting to know what his reasons were. He said he had thirteen. "What are they," said one. "Well," he said, "in the first place I have not got a cent of money." They said, "Well, you don't need to state the other twelve." (Laughter and applause.)

Here are seven reasons from Bryan. I will read you only one, and nobody will care then what the other six are. (Laughter and applause.) After Mr. Bryan calls attention to the fact that in 1896 the great paramount question was the question of money, free silver, and that Mr. Clarke differed from him as to that, and that now Mr. Clarke is satisfied with all the rest of the present platform, he says "after hearing Mr. Clarke in his speech, and after talking with him, I am satisfied with him on *that* point." What do you suppose John H. Clarke said to William J. Bryan in that confidential private talk on the money question which satisfied William J. Bryan? As he insisted on the gold standard he must have at least "winked his other eye." (Laughter.)

Some one from the platform in rear of me says Mr. Clarke



has stated that if elected he is going to sell his bank stock. I am not surprised. That is the wisest thing I have heard of him saying. For if he is elected I advise all of you to sell your bank stock, and every other kind of stock. (Applause.) You will want to do that the next morning after the election is announced, so that you may get in before the other fellow. For it will happen again in such event just as it did when we elected Grover Cleveland the last time. We usually think of the panic starting the year following, but in fact it started the next morning at the breakfast table. Every intelligent man who read that Grover Cleveland and a Democratic Congress—Democratic in both Houses—had been elected, on a free trade platform, understood that meant a change of policy which would affect business, and so as he went down to his counting-house, if he was a banker, like Colonel Herrick, he began to think of his weak credits ; which ones he had better call in, and as a result the banks all over the country began calling right away. All felt alarmed, and it was but a little while until A found out that B was scared just as badly as he was, and that alarm quickly spread all over the country until finally it broke upon us in a panic that continued through the whole four years of Mr. Cleveland's administration.

We used to hear a good deal about amending the Constitution, so that the President could hold his office six years instead of four ; we thought four was not long enough. It made elections come too often. But before the four years of Cleveland's second administration were out, we did not hear any more of that proposition. We then learned that four years were a plenty when we had the wrong man in. (Laughter and applause.)

Now I am not going to tell you any more of these seven reasons because that one is enough. If he is satisfactory to Mr. Bryan he cannot be satisfactory to us, and that is the end of it. (Applause.)

My fellow citizens, we know where John H. Clarke stood in 1896. We know that he is on a platform to-day asking the people of Ohio to make him Senator of the United States, which reaffirms the obnoxious proposition that made him a bolter in 1896, and we know that Mr. Bryan has put his mark of approval on him. He says "he will do"; seven times over he will do. (Laughter and applause.) "He will do because he has told me what he thinks on that point, and I am satisfied." That's enough.

For either Mr. Bryan does not any longer favor the free, unlimited and independent coinage of silver at the ratio of sixteen to one or else Mr. Clarke has told him something that makes him satisfied that he is not against him. However that may be, if it were important at all, that would be reason enough why Mr. Clarke should not be sent to the Senate of the United States at any time. But think of sending him there when he stands on such a platform, and represents such ideas, and has such a record, at the expense of keeping at home Marcus A. Hanna!

I wish he were not here on this platform, except for the pleasure it will give you to hear him in a minute, in order that I might tell you all the good things I know about him. He is such a modest man that I am afraid if I should say all I should that I would embarrass him. (Laughter and applause.) But I have been serving with him in the Senate of the United States now for six years, and I take pleasure in saying to you, even if he is present, that no representative of the State of Ohio in that body ever served our State with more conspicuous success, or won for himself and our State greater honor. (Cheers.) A great many people did not seem to like him when he first went there. The way he felt about it reminds me of that song the Clinton County band boys sang as they marched through the streets of this city this morning. (Laughter.\*)

\*The refrain of the song referred to was "What the hell do we care."

He did not care whether they liked him or not. He went along about his business. He attended to it. He was prompt in his attendance. He was there every time there was anything important to do, and he understood what the business was and how to do it (laughter and applause); and no member of that body had greater influence to bring about right conclusions than Senator Hanna had. (Applause. He did not have it at once; but little by little at first; much by much later, rapidly he went to the front, until no man there outranked him as a Republican leader, or as a Senator. (Applause.) In every great measure that has been before that body, his presence, his influence, his services, all that anybody could do, have been recognized and have been felt. For us not to send him back to the Senate, no matter who might be opposed to him, would be distinctively a great national loss and a shameful State humiliation. We are not going to do that, are we? (Applause and cries of "no, no.") Well, you have a special duty to perform in regard to it right here in Ross County. I can remember when Ross County used to go Democratic. I lost here several times when I thought I had a pretty good hold on her too. (Laughter.) I lived all the days of my youth in Highland County, adjoining you. I had a great many friends in Ross County. I went to school a year up here at South Salem. Two companies of the 89th Ohio came from this county. I knew all of them pretty well. I thought with all that on my side I ought to always carry Ross County, but she nearly always got away from me. But of late years, my fellow-citizens, she has not gotten away from the Republican Party. Of late years, by experimenting with a Democratic Administration, and tinkering with the tariff, the people of Ross County have come to know the difference between prosperity and adversity, between Republicanism and Democracy, and now they are nearly all the time represented at Columbus and elsewhere by Repub-



licans. That is the way it ought to be. That is the way I want it to be this year. I want every Republican and every Democratic vote—for I do not see why every Democrat might not join with us once, especially this year. (Laughter and applause.) I say that seriously.

This campaign is now a month old. It was a month ago when the Democrats named their ticket, Tom Johnson and John H. Clarke, and adopted that platform which Colonel Herrick said made up a "newfangled Democracy." I have talked with a great many Democrats during this month. I have not intruded my views upon them but they have pressed theirs on me. They have, somehow or other felt distressed. They apparently wanted to pour out their grief to somebody. (Laughter.) And I tell you my Democratic friends of Ross County, not one single Democrat of the many who have talked with me has failed to say that this year he is going to vote the Republican ticket—not one. (Applause.) You may go down to Cincinnati and stand at the street corners and ask them as they pass, and I will guarantee that out of the number asked, more Democrats will tell you they are going to vote for Myron T. Herrick than will tell you they are going to vote for Tom L. Johnson. If they will do that in Cincinnati, I do not know why they should not do it in Ross County. I know you will do the same in Ross County, and I know there will never be a time better to do it than this year, 1903. (Applause.)

And now let me tell you why that is. For after all the most important question about which we are concerned at this election, is not what particular man may hold some particular office, but it is whether this great, central commonwealth of the Union is to go Democratic or Republican. That is what everybody wants to know. They want to know in the other States of the Union whether we are still "standing pat". (Laughter and applause.) That is it. Well, let us tell them that we are. And I will tell you why we should.

In the first place—and I say it most respectfully, the Democratic party, as it is to-day organized and inspired, is not fit to be intrusted with power. It is not fit to be entrusted with power because it is utterly unable to agree with itself. There is no bitterness or hatred in American politics like that which fills the hearts of the gold Democrats and silver Democrats toward each other. They cannot even agree on what Democracy means. (Laughter.) Do you think Mr. Cleveland and Mr. Bryan would in the same way define Democracy? You know on every important proposition they are at bitter war with each other. If such a party were to get into power, what would they do? You know what they did in 1893, when they came into power. They could not agree about anything. They undertook to legislate about the tariff but every man had an idea of his own, and it did not agree with anybody's else idea as to how the tariff should be revised. They, however, finally passed a bill in the House. They sent it over to the Senate and there they amended it, so as to make it a Democratic measure, just 1,469 times. That is all. (More laughter.) And then when they sent that bill to President Cleveland, the bill as to which the House could not agree with the Senate nor the Senate with the House, Mr. Cleveland would not agree with either of them and so he refused to sign it. He denounced it as party perfidy, and let it become a law without his approval. Now they were months and months debating over that measure. The mere fact that they had no common belief, no common purpose, that they could not agree to anything, except only that they were Democrats, so alarmed the country that we had sore panic and distress long before the measure went on the statute books. Do you think it would be any better to-day? Do you think the Democrats in the East and the Democrats in the West, the Cleveland Democrats and the Bryan Democrats could agree upon any important measure? Everybody

knows that they could not. This mere inability to agree makes them an unfit agency.

But what a time we would have if they should get in and should happen to agree. (Laughter). Disagreement would be bad enough, but agreement would be bloody ruin. (Laughter and applause).

See what it would mean. Take their platform and read it. They pompously and ostentatiously denounce the tariff, and denounce colonialism, and denounce what they call government by injunction.

I am not going to waste time here discussing these matters. I am simply calling attention to them. But if they had their way about the tariff, where do you think they would land this country? That Wilson-Gorman Bill, which Mr. Cleveland would not sign, carried a great deal of protection, but it left many industries without enough protection to protect, and the result was that they had to suspend, labor had to be turned out of employment into idleness and we had panic; we had business paralysis, failure and suffering everywhere. No wonder we were all rejoicing when finally there came an opportunity to put William McKinley at the head of the Nation, and to restore a protective tariff. (Applause). That brought back prosperity.

Then the war came on. We did not want it, but we met it when there was no other alternative, fought it out, and then made a treaty of peace; and it was ratified, but my fellow citizens, not without the help of the Democratic party. We could not have commanded a two-thirds vote in the Senate except only for the seventeen Democrats who, upon the advice of William J. Bryan, voted with us. That treaty imposed upon us the duty of taking title to Porto Rico and the Philippines, and assuming certain obligations there which it will require years of time to faithfully discharge. We are now only in the midst of that great work.

And now come these people and they tell us that they denounce these acquisitions, and our colonial policy, as they



term it, with respect to the Philippines. Well, fortunately, their denunciation will not, I am sure, receive the approval of the majority of the American people. For the American people want this Government to discharge, honorably, every obligation it has assumed whether at home or abroad. (Applause.) The American people want us, now that we have established government there, to maintain it until we have discharged all our duties there. When that time comes, years in the future, we or our children can discuss, if they wish to, what shall be ultimately done with those possessions.

#### GOVERNMENT BY INJUNCTION.

And now as to government by injunction. What is that? Let me, my fellow citizens, tell you what it is.

That phrase expresses a most dangerous thought. It means an attack upon our courts. If this assault succeeds and a part of their jurisdiction is taken away from them it won't be long, I predict, until somebody else will demand that some other power be taken from them and it won't be long until they are practically destroyed. Our courts are our sheet anchor. They must be jealously guarded. The proposition is more than dangerous: it is revolutionary. But it is also demagogical. It is intended to capture the labor vote. It won't do it, at least I don't think it will. The laboring men have too much sense to be fooled by such pretenses. The Democratic party never did understand the labor vote of this country; they misjudge it in this case, and it is a poor compliment they pay to the intelligence and patriotism of laboring men when they appeal to them on such ground.

The proposition is that the courts of the United States shall be stripped of their equitable power to grant writs of injunction in certain cases to prevent the execution of threats of personal violence and injury to property rights. No class of men stand more constantly in need of the protection of the courts than the men who toil. They

are the special wards of courts of equity. But we are all alike interested in the courts and their independence, for in them we have ever found a conservative and preservative force.

The Constitution of the United States confers upon them all the judicial power that belongs to this Government. Congress has provided for the exercise of that power by suitable tribunals. For us to take that power away from them in whole or in part, and not invest it somewhere, in some tribunal, would be revolutionary, as well as unpatriotic and unwise. We are not going to do that. On the contrary let us say to everybody hereafter as heretofore, "If there shall be an erroneous judgment rendered take your appeal and abide the results of the higher courts, as all are bound to do, and do not undertake to make of the judiciary of this country a political football; for the American people, in their intelligence and their patriotism, will not have any patience with such a proposition." (Applause.) If you have any purpose that conflicts with an American court of equity, you may rest assured you had better abandon it. (Applause.) That will be the safest as well as the best thing for you to do, no matter who you may be (applause), high or low, rich or poor. (Applause.) No man and no party can be friendly to laboring men, or to any other class of our people and teach anything else. (Applause.)

Now, my fellow citizens, it is because there are affirmative propositions in their platform of this character that I say to you, if the Democrats were to get into power, and were to be able to execute their declarations, they would ruin this country. Every man knows they would.

Fortunately we have two chances of escape from that. In the first place, they cannot agree. (Applause.) In the second place, there is not enough of them, and in the third place, if I may add a third, we do not intend to give them a chance. (Applause.)

Why should we? Was there ever in the history of our State a more satisfactory condition than that which obtains

to-day? Under the splendid administration of Governor Nash the last dollar of our public debt has been paid. Our benevolent institutions are everywhere conducted with efficiency and economy. They are a credit to the state and a credit to the party.

And in National affairs it is even more creditable, if such a thing were possible. All happiness, all contentment, all prosperity, all business activity everywhere, from one end of the land to the other. Could you hope to better it, with William J. Bryan or Tom L. Johnson or John H. Clarke, or any other Democrat at the head of the Nation? Everybody knows that you could not.

The thing for us to do, therefore, is to rally in Ross County, and in all the other counties of Ohio, and elect Myron T. Herrick Governor by the biggest majority ever recorded, (applause) send Senator Hanna back to the Senate of the United States with a commission to stay there six years more, when we will send him another six years if he wants it, or as long as he wants that sort of a job. (Applause.) We do not want any better representative than he has been, and will be. And then, when we have done this splendid work, we will be ready to head the column next year for Theodore Roosevelt for President. (Applause.) We are fortunate in having such a man in the White House, and we will be fortunate next year in having such a man for our candidate. He is broadminded. He is aggressive. He is strenuous. He has the zeal ; he has the energy, and he is not afraid of anything or anybody. (Applause.) He is an ideal president ; a typical representative of all that is highest and best in American politics. He has discharged his duties with a dignity, fidelity and capacity that entitle him to the confidence he enjoys, and next year we will nominate him and Ohio will lead in the great fight to put him back in the White House for four years more. (Prolonged cheers and long continued applause.)

# SPEECH OF SENATOR FORAKER

AT  
Washington Court House, Ohio,  
OCTOBER 15, 1903.

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MR. CHAIRMAN, LADIES AND GENTLEMEN:

It has been indeed a pleasure to me, as the Chairman has suggested, to visit Washington Court House on this occasion. I have had an opportunity, in visiting you this afternoon, to meet and renew old acquaintances and friendships; acquaintances of years ago, whom I have remembered always with the greatest of kindness; friendships I could never forget, no matter how I might be situated. But I had no idea that, added to the pleasure of meeting with old friends and acquaintances, I would also have the distinguished honor of being nominated for the presidency, (laughter). That was indeed a surprise I was not anticipating. I did not know that anybody was thinking about it, but if you are serious about it, you need not change your minds on my account. (Laughter.)

I am gratified also, my fellow-citizens, to see the indication, which this meeting amounts to, that Fayette County is, in the language of the Chairman, "all right." That is the way she ought to be. I am glad to know Highland



County is also all right. She is not always all right ; she was not exactly all right two years ago when she sent a Democrat up to Columbus to vote against me, instead of some good neighbor to give me his support. (Laughter.) But I am gratified to know, and believe, that what she failed to do in my case two years ago, she intends to make amends for by what she proposes to do for my colleague, Senator Hanna, this year.

But now, my fellow-citizens, I am reminded that it is late, and I ought to proceed with the discussion of the questions I came here to consider with you. You have been very patient. When the Chairman asked you to wait in patience till the Highland County delegation arrived, I thought of an incident related of Charles Lamb, who was, as you know, a great literary character ; he was also a great humorist. He once had the honor of holding an excise office. On one occasion an inspector, going about investigating the habits of public officials, made report that Mr. Lamb had a bad habit of arriving late at his office in the morning. He was called to account for it by the head of the department. He said, the charge was true, but he had this to say in extenuation, that while he got there late, he made up for it by leaving early in the afternoon. (Laughter.) We are starting late, but I shall undertake to make up for it by quitting early in the evening.

We are about to engage, or, as your chairman has indicated, we are engaged in a campaign of much importance ; one in which we have three great questions to determine :

The first is, who shall be the next Governor of Ohio ?

The second is, who shall be the next Senator from Ohio ?

The third is, who shall be the next President of the United States ?

They are all wrapped up in this election which we are about to have, absolutely as to the first two questions, and

in a most important degree as to the third. I think I can answer all three of them now. But it is for us, when we speak in November next, to say whether the next Governor shall be Myron T. Herrick, or Tom L. Johnson, for I do not believe anybody else has much of a chance; one or the other of these will be chosen. I am here to-night to point out, in a feeble way, as best I may be able to do, why Mr. Johnson should not be made our next Governor. We do not want him, in the first place, because he is a Democrat. We have had several Democratic Governors. While Democrats are very excellent people for many things, they do not seem to be cut out for Governors. You remember we had Governor Hoadley; then we had Governor Campbell, both excellent gentlemen; both polished and agreeable fellow-citizens, but both of them alike, ran the State into debt, practically bankrupted our treasury, and so badly administered our public affairs that we regarded one term as "a plenty" for each of them.

That he is a Democrat is, therefore, reason enough, to start with, why Mr. Johnson should not be chosen.

But I have another objection to him, and that is, that he is not a good Democrat. If I am going to have a Democrat at all, I want the old Simon pure, unterrified and unwashed sort, like Allen G. Thurman. I do not believe Thomas Jefferson, Andrew Jackson, Allen G. Thurman, William Allen, or any of the old-style Democrats would recognize or claim fellowship with Mr. Johnson if they were here to-day. He represents new ideas and bad ideas.

But there is another reason, and a more pertinent one, and that is, we do not like the platform on which he stands. It is not too harsh a thing to say of it, that it is a compilation of humbuggery from beginning to end. Humbuggery, I mean, in the sense that it is not in good faith. What is the nature of it? Mr. Johnson is making speeches over the State, and what is he talking about? In the first place,

responding to the declarations of his platform, he is demanding that we have "equal taxation" in the State of Ohio, more equal taxation. But, as I say, he is insincere about it, because, if the reports be true, he won't pay his own taxes. (Applause and laughter.)

And, in the next place, this man who is clamoring about equal taxation is an advocate of what is called "single tax" I do not know how familiar you are with that proposition, but Henry George was the author and advocate of the theory that all taxes should be levied upon real estate, without regard to the improvements on the real estate; that no personal property should be taxed, not even the buildings; that the entire revenue derived from the taxation of property should be levied on the land alone. Well, you know what your rate of taxation is now, although your taxes are levied upon personal property as well as upon your land; levied upon horses, levied upon notes, mortgages, bonds, stocks, everything that is taxable under the laws of Ohio. Consider what the rate of taxation would be if this advocate of equitable taxation could have his way about it and put into effect the ideas he advocates, with all personal property eliminated. Your tax rate would be pretty nearly doubled. It would be levied alone on the land. The merchant would not pay anything on his stock of goods, the bank would not pay anything on any of its assets, except the lot of ground where the bank stands. The money lender would not pay anything on his loans or the mortgages he holds, but the farmer and lot owner would have to pay it all. My friends, is that equitable? Mr. Johnson makes no denial of the fact that he is a believer in this theory. He stated only recently, publicly, that his chief purpose in being in public life was, if possible, to give effect ultimately to that idea. And when it was pointed out to him that the result of that would be to largely increase the rate of taxation of the real estate, that the farmers could

not afford to hold their lands, and that nobody else could hold real estate, he said that that was exactly what he wanted to accomplish ; that he wanted the rate of taxation to be so high the Government would take title, and there would be only public ownership. That is the kind of man who is talking about "more equitable taxation," and I say, because he comes before the people of Ohio having these beliefs, avowing these purposes, I have no faith in him. It is indeed humbuggery when such a man talks about wanting to be Governor in order to have "more equitable taxation." But, my fellow-citizens, he could not do anything if he were Governor. The constitution and the laws of Ohio are framed so as to require absolute equality of taxation ; the constitution requires, and the laws are framed in pursuance thereof, that every bit of property in the State of Ohio, personalty and realty, shall be appraised at its true value in money, and the same rate of taxation shall be upon both alike, in every county where the property is situated, and in every municipality where it is situated. If there be any inequality of taxation, therefore, it is an inequality for which the law is not responsible ; an inequality for which those charged with the administration of the law may be responsible. That is what I mean when I say Mr. Johnson could not do anything, if he were Governor, to bring about more equitable taxation, if he really means to have more equitable taxation, for all he could do, if he controlled the Legislature as well as the powers of the executive office, would be to provide by law that there should be this absolute equality, and we already have that absolute equality required. So, I say, there is nothing about taxation in this Democratic platform to commend its Democratic candidate to our favor.

He has a lot more propositions to offer you in this campaign ; in fact they are so many I can hardly remember what they all are. But he is going to require by law that



the railroads of the State shall not charge more than two cents a mile fare for passengers, without regard to the condition of the railroad or its earning capacity, and without regard to whether it is a completed road over which they are operating, or one as to which they are still engaged in its construction. Without regard, in other words, to the equity, justice and rights of other interests which may be involved. If he is going to thus arbitrarily cut the fare down to two cents, I do not see why he could not just as well cut it down to one cent. Nobody who wants to travel is going to object to a lower rate of fare, and you will not draw a political line on such a question as that. All Republicans, and all Democrats, when they have occasion to travel, desire to travel as cheaply as they may.

But, my fellow-citizens, you have three or four railroads here. Your town is growing so rapidly I can hardly keep track of it. I remember when you had only the Muskingum Valley; now you have the Midland, or B. & O., the Detroit Southern, the one the Highland County boys came in on I suppose, and the C. H. & D. Four railroads. They are all in different states of completeness. The oldest of these roads, in all probability, is the most complete. A railroad is a railroad, I suppose, in one sense of the word as soon as you have the roadbed made, the track laid down, and have commenced running cars over it, but yet it is not such a railroad as the great railroads of this country have come to be after the companies have been engaged in their further construction and improvement year by year, through all the years since they were first put into use. Your oldest railroads are, no doubt, in the best state of completion. Why is that? It is the experience of almost every railroad, that by the time they are ready to commence operating it, they are not yet ready to commence paying dividends. They are not done with the construction of it. They have the business to build up, they have the road to ballast. As

time goes by, as newer and heavier cars come into use, they have occasion to change their bridges and strengthen them and make their tracks better adapted to more modern methods of travel and traffic, and there is constantly a requirement for the expenditure of money on account of that. Some of the railroads in Ohio are able to make their operating expenses, to pay the interest on their bonds, to pay all their fixed charges, and to pay a dividend on their stock; and some of them are not able to pay the interest on their bonds, and some of them that can pay the interest on their bonds are yet not able to pay dividends on their stock. I do not know how it is, but I doubt if any dividend has ever yet been paid upon your newest road, The Detroit Southern. I do not know what the fact is, but if it has not been it is simply illustrating the stages through which railroads have to pass. Some of the railroads are meeting all the demands upon them and making a surplus besides. But those that are making a surplus do not put that surplus in their pockets, or distribute it among their stockholders, or give their surplus to their officials; but every railroad in this country, during these times of prosperity when there is great travel and great traffic; every railroad that is making a surplus is, I think, without exception, expending that surplus to accomplish another purpose, in which we are all interested. When you want to go East to New York, or when you desire to go to Chicago or San Francisco, you want to know, when you take passage on a railroad, that you will be carried surely and safely, and the railroads of this country have been rightfully expending many millions of dollars of their surplus in the betterment and improvement of their property.

I was talking with a railroad official a few days ago in regard to his company, and he says that for twelve years past they have put every dollar of surplus they have earned, over and above operating expenses, into the improvement

of their property, and have not paid a dollar in all that time to holders of their common stock. This year they made a pretty large surplus, and every dollar of it went into the road.

If you will take a train and travel to Washington or New York over either the Pennsylvania or B. & O. or C. & O. Railroad, or over any of these great railroads, trunk lines, that cross the continent, you will find that all of them are thus engaged in the expenditure not only of their surplus, but also the proceeds of securities which they are issuing upon the credit, which in these times they are able to command. They are enlarging and better and more safely constructing their tunnels. I came out from Washington a few days ago over the Baltimore & Ohio Railroad, and almost every tunnel was receiving attention, being enlarged and newly lined; they were also double tracking, and lessening the grades on the road; in other words, improving the road in order to make it, as nearly as possible, a safe road; one which the people of this country can travel over in safety, and not only which the people can travel upon, but over which the employés of the road can be carried safely while engaged in their occupation.

Now, this is a question that concerns not only every man who travels, but every man who is an employé of a railroad in this country, and there are tens of thousands of such men. We are all interested in travelling as cheaply as possible, but we are also interested in the safety of human life. We are all interested in having these great highways which are becoming, year by year, more of a necessity, made as nearly perfect, made as nearly safe, as human skill and enterprise can make them. This is a time when some of the railroads have a surplus, those that are prosperous, and they are employing it in that way. I remember there was a time when they did not have ability to do this work; and that was not very long ago either. During the second adminis-

tration of Mr. Cleveland, as I went over the country, campaigning, and on other accounts, I did not have any trouble in getting a berth or a seat in a sleeper. I could get an upper or lower berth, or a whole section, or a stateroom ; it was just like travelling around in a private car ; there was no trouble in that regard during those times.

And there was no work being done on the railroads then ; straightening tracks or enlarging tunnels or improving the equipment and providing further for the comfort of those that travel. Nobody had any confidence that made them put their hands in their pockets and take out the money necessary to accomplish this great and necessary work. Now, if I want to go somewhere, I must apply three or four days beforehand, if I want to get even an upper berth. You may succeed at the last hour in getting accommodation, but if you want to be sure of it, you must go early. It is the early bird that gets the berth. (Laughter.) That is because everybody seems to have this three cents. That reminds us of the story that was frequently told in campaign discussions, when the tariff was being discussed. An Irishman came to this country, and was asked three dollars for a hat that he wanted to buy. He said, " Be Jabbers, I could get that hat in Ireland for fifty cents." The salesman said, " Why did you not get it in Ireland, then ? " " Be Jabbers, I did not have the fifty cents." (Laughter.) He did not have it. So it was when the railroads did not have any surplus ; everybody was too poor to travel at any price. But to-day we have prosperity. The farmer is busy ; he has a market for all his products. The wage-earner is busy in the mill, the factory or the machine shop. Everybody that has labor or products to sell has a market, and the railroads are doing the greatest business in all the history of the country ; and in the improvements they are putting upon their lines of railroad, they are doing a great good for the



American people. I do not believe in electing a man Governor of Ohio on an appeal of the kind Mr. Johnson is making, for that would have a tendency to discourage this great work. It is better to say to him, "Just wait until we need a Democrat." If he waits until then, he will wait a good while, for I do not think we will ever have real need for another one. (Applause.)

But I have talked longer about that than I intended to.

And yet I would mention another consideration in connection with it: Competition regulates these things as well as everything else. We should apply that remedy to this question. It will be better than any legislation can be. I can remember, and there are others here who no doubt remember, when you could not hear a Democrat of the old school make a speech that he did not remind you that it was a fundamental idea with the Democratic party that "that people was best governed that was least governed." That was a cardinal idea of the old Democracy, of the Thomas Jefferson and Andrew Jackson school. But not of the school of this new party.

Now, let me see what else Mr. Johnson has talked about. "Home Rule." Yes. If there is a man in Ohio who hasn't any right to advert to "Home Rule," that man is Tom L. Johnson, for he seems to be absolutely unhappy unless he can be poking his nose into the business of every other community than his own in the State. Up in Cleveland, where he has been Mayor two or three times, they have had a superabundance of home rule, according to Mr. Johnson. As a result of his "home rule," their public debt has been increased \$20,000,000, I believe, or more; and their rate of taxation has been increased until I believe I am correct in saying that it is the highest to-day that it has ever been in the history of the city of Cleveland. And I notice in the papers that the city of Cleveland has been offering some bonds for sale, in order that she may make some of these

improvements, that in his home rule administration have been authorized. Well, now, that is a great city. According to the census, they have a greater population than Cincinnati, but down at Cincinnati we think there is something the matter with the census. But, however that may be, Cleveland is a rich, powerful and prosperous city, one of the richest in the country, yet in his administration, for the first time in the history of Cleveland, the bonds of the city have been offered and there have been no bidders. They do not like that kind of home rule in Cleveland. We do not want any of that kind of home rule down in Cincinnati, and you would not want any of that kind of home rule in Washington Court House.

But, my fellow-citizens, what is all this talk about? By the new code it is provided that when the mayor and council, in certain classes of municipalities in Ohio, cannot agree upon the appointment of certain officials that are provided for, the Governor shall appoint them, the disagreement being properly certified to him. That is all there is of it. You would think, to hear Mr. Johnson talk, that there was some great sacrifice of human liberty in this; that some one was being denied some great organic right. It is because there is nothing in the cry of home rule, nothing in his clamor about equitable taxation, nothing that is justifiable in his advocacy of two-cent fare, that I said to you awhile ago that we do not want Tom L. Johnson for Governor, because he stands on a platform that is simply a compilation of humbuggery. And I think you will agree with me, I think Ohio will agree with me, and I think the people of Ohio will say so by the largest majority ever registered in the history of our State against any candidate for Governor.

I heard that a distinguished fellow-citizen of yours here in Washington Court House gave, a few days ago, as his *judicial* opinion, that Tom L. Johnson would be beaten by

at least 150,000. He did not give that out for publication, and did not know that it would be repeated to me so I would tell you about it; therefore, I am not going to take any advantage of him or embarrass him by telling you who it was; I will simply tell you that was his *judicial* opinion. (Laughter). You can figure out who the judges are and who the would-be judges are, and who would be likely to make a comment of that kind. (Laughter). But if it is to be 150,000, I do not know why it should not be 250,000, for I do not know any reason—and I am speaking seriously—I do not know a single solid, substantial reason why anybody should vote for Tom L. Johnson. Well, I will qualify that; I do know some reasons why some people should vote for him. While he does not represent the old-fashioned Democracy, the Democracy that we had to contend against in years past, he does represent the new-fangled ideas of populism, communism and anarchism. I do not know why any old-fashioned Democrat should vote for him, but there is no reason why any anarchist, populist or communist should not cry himself hoarse for him. And, again, because his appeals reach that class of people, we ought to overwhelmingly defeat him, and I believe we will, for if ever the Democratic party was “gone to pieces,” I think it is just now.

That is enough about this first question as to the Governor.

The second question is: Who shall be senator?

Well, I guess we are ready to vote on that now. (Applause).

The Democrats have nominated as their candidate in this campaign Mr. John H. Clarke. Mr. Clarke is a very worthy kind of a man in private life, he is a man who is entirely agreeable, socially an accomplished gentleman, an honorable man in all his private relations; a man of very decided ability, a man who is very thoroughly appreciated by his

fellow-citizens in the community where he resides ; so much so, that it is my opinion that he ought to be allowed to remain there where he can continue to be appreciated. (Laughter). Because, while he is thoroughly appreciated on account of those qualities where he lives, because of his political opinions and ideas he would not be appreciated at Washington ; he would be out of his element there. (Laughter). At Washington we have a Republican administration, and Theodore Roosevelt is at the head of it, and next year we will call upon him to be our leader again and give him another commission for four years more. (Cheers and applause.) That is just as certain to happen as that he lives and the time comes. Now, what use has he for a man like Mr. Clarke? He could not call on him to help in legislation about the great economic questions that affect the country. He could not call on Mr. Clarke for any help in regard to the tariff, or in regard to any of the great policies which he wants to carry out. He could not call on Mr. Clarke to help him solve any of the difficult problems, such as arise with respect to our insular possessions. Mr. Clarke, judging from his declarations on all these great questions, would simply be in the minority, a sort of thorn in the flesh, not assisting the National Administration and not representing the sentiments of the people of Ohio. We do not want to be misrepresented. He has talked a good deal, he talked a good deal in 1896 ; then he was right. He is one of these men who are sometimes right and sometimes wrong. In 1896 he was vigorously declaiming, everywhere, against William J. Bryan and Free Silver, and he said awfully bad things about Bryan ; awfully bad. I would not think of saying such bad things about Bryan or anybody else ; and now this year we find him on a platform running for Senator alongside of Tom L. Johnson, with all these populistic ideas in that



platform that I have been commenting upon, and included among them is an indorsement of that same free silver heresy that he condemned in 1896. It appears that he has had a talk with Mr. Bryan. In his speeches he is just as much opposed to free silver as ever he was, and Mr. Bryan has said he never will support anybody who intelligently opposed free silver in 1896, but he says as to Mr. Clarke, "I pardon his offense; I have had a talk with him, and pardon him because of what he said to me in that conversation; I am of opinion that he did not understand or appreciate in 1896 what an awful mistake he was making when he opposed me, and I agree with the views he now entertains." Then Mr. Bryan said, "I am just as much in favor of free silver as I ever was, and just as much opposed to anybody that is not for free silver as I ever was! But Mr. Clarke is all right." What do you think Mr. Clarke said to him in that private conversation? I guess he at least "winked the other eye" (laughter); he must have said to Mr. Bryan that "he was all right." However that may be, that is only speculation, we know the fact to be, that Mr. Clarke was opposed to the Chicago Platform in 1896, and that he is now in line with what is left of this Democratic party under the leadership of Tom L. Johnson, standing on a platform that approves that platform of 1896. Well, I like a man who is right when he is right, but if he is one of these men who sometimes gets wrong, I do not want to trust him with any important business, for fear he may get wrong at the wrong time. (Laughter and applause.)

It is not necessary to do it.

We have, my fellow-citizens, a man who is absolutely right all the time, in the person of our candidate, Senator Hanna. (Cheers and applause.) He was not for free silver then, is not for free silver now, and never represented or advocated any heresy or ism or fad; and does not now;

and, what is more, he never will. (Applause.) For if I ever knew a man who was pre-eminently distinguished for sound, hard, common sense, it is Marcus A. Hanna. (Applause.) Up here in Columbus last night, we were entertained by the Glee Club, one of the greatest singing organizations I have ever known. One of the pieces they were singing was one in which, referring to the Senator, was this line, "For he is a great big man." That is right, that is what he is, and no Democrat has tackled him in the Senate of the United States who has not found it out to his entire satisfaction. He is not so diplomatic in debate as some men, but I never saw a man who could more certainly hit the bull's eye than Marcus A. Hanna. Nobody pulls any wool over his eyes, and when he debates he is as unerring as a rifle. He goes straight to the mark and hits and rings the bell every time. When he went into the Senate, he was made the subject of a good deal of criticism. He had not been much in public life; he had been a business man; he had been successful in business, and he appeared suddenly in the political field as the friend and champion of William McKinley; that commended him to everybody, because of the lovable qualities and characteristics of Mr. McKinley, but there were many who detracted from Mr. Hanna and said his position, and all he enjoyed, he was indebted to McKinley for; that he had not accomplished anything on his own merits, and thus it was extreme abuse to which he was subjected. You could not pick up one of these pictorial cartoon papers in which they publish funny pictures without seeing a ludicrous picture of him; usually he had on a dollar suit, as though that typified all there was of him. That was a pretty good illustration of the esteem in which he was held by millions of the American people when he took his seat in the Senate of the United States.

I never saw a man grow more rapidly than he grew. All that abuse did not seem to bother him a bit ; he took it as a sort of compliment. Feeling his own rectitude of purpose, he was content, to use his own language, to simply "stand pat," and bide his time. He went to work in a humble, but effective way, and soon commanded the respect not only of every Republican but of every Democrat in that body. He has done a great many things for which he is entitled to be gratefully remembered by the electors of Ohio at the approaching election. I am going to speak about two of them.

His ship subsidy bill has not become a law yet, but it has passed the Senate, of which body he is a member, and largely because of his advocacy and his support of it. I see he is being roundly criticised by Democratic speakers in this campaign, for his advocacy of that measure. That is the reason I speak of it to-night. Let me tell you the occasion for that bill. In the early days of the Republic we had a great merchant marine. We carried, in American bottoms, under the American flag, in ships built and owned by Americans, and ships, the crews of which were almost altogether Americans, ninety per cent. of our foreign exports and imports. Only about ten per cent. of the whole was carried in foreign bottoms and under foreign flags, but before the Civil War we commenced to lose ground. During the war the *Alabama* and other Confederate privateers practically swept our merchant marine from the seas. Since the war we have been unable to restore it. The character of ships has changed, and conditions have changed. Under the old régime, when our merchant marine prospered, we had a law that assisted, not by direct subsidy, but by providing that there should be a rebate of tariff duty allowed to every man who would ship from abroad to the United States in American bottoms. That is, if you were in Liverpool, and bought a lot of goods, and wanted to ship them to the United

States, if you shipped in an English vessel you would have to pay full tariff, but if you shipped them in an American vessel you would be allowed a reduction of that tariff by ten per cent., or five per cent. in some cases. The result was that everybody who wanted to ship goods to America took advantage of that provision of the law, and our merchant marine was speedily built up. But when that law was repealed, by a Democratic Congress, our merchant marine began to dwindle away and we have never been able to restore it. We are not now able to restore it by the method by which it was formerly built up because of treaty obligations which stand in the way. And as I say, our merchant marine has languished until now, instead of carrying ninety per cent. of our imports and exports, we carry at most only ten per cent. All the rest of our goods shipped across the ocean are carried in foreign ships. And why is it that these foreign countries can have a great merchant marine, and we not? They are not more intelligent than we are, nor are they better sailors than we are; in that early day we were noted for the capacity of our seamen, and so we are to-day, to the extent we have any. This was shown when our Navy was recently given a chance to do some work. Now it costs us more than \$200,000 a year to pay for the transportation of our products in these foreign-built ships. We are paying that much to British, German, Norwegian and Scandinavian ship-owners, the men who are carrying on this Trans-Atlantic and Trans-Pacific business. This money goes out of the country; we pay it to foreigners.

In this emergency the question is what do we propose to do? We propose, not being able to resort to the old method, to subsidize our ships. We propose to do exactly what Great Britain does, exactly what every other country does that is in successful competition with us. Great Britain appropriates annually large sums of money to men who



will build and sail ships under the British flag, ships equipped for commerce, and thus she not only maintains a merchant marine, but she also has a nursery out of which she can recruit her navy and make herself a great and powerful mistress of the seas. We propose to meet these powerful competitors of ours on the same ground. The ship subsidy bill provided that out of our great, rich, treasury we will pay not to exceed \$9,000,000 annually as a help to the men who will build ships in the United States, of American material, by American workmen, thus giving them employment here at home. Ships that will be put in commission, and with American seamen, sailed under the Stars and Stripes. Not one dollar of this money is to be paid to anybody who owns any ships now in existence. It is all to go to such ships as are hereafter built in America by American workmen and sailed under the American flag.

What is the principle involved in this, my fellow-citizens? The principle involved is precisely the same as that involved in a protective tariff, which question we have discussed heretofore with our Democratic friends. It was a great struggle, but our policy prevailed, and as a result, we have been made safe in the expenditure of capital, the development of our resources, and the employment of our labor. As a result, we have become the great nation that we are. But while we have been thus protected on the land, we have been neglecting to protect our interests on the seas, and we have been suffering on the sea precisely what we suffer quickly and excruciatingly on the land when we have free trade. But by the help of the Government extended to this industry, which is a large and important one, we propose to build up again our merchant marine, and make it possible to ship American goods in American ships, under the American flag, with crews which, if not altogether, are at least largely Americans. Now, is not that a worthy purpose?

What is the necessity for this? They undertake to tell us there is no necessity. I do not want to weary you by reading, but just for a moment, let me call your attention to some information upon this subject. It is one thing to get up and talk glibly to a popular audience; it is another thing to legislate. When you come to legislate, when you are drafting a measure, when you have brought a bill before a body like the Senate of the United States, and then stand up to argue it, they want to know your reasons for it, and mere denials and assertions don't amount to anything. You must be able then to produce the facts. When you can produce them, and they are sufficiently strong, you have made your case, and you will probably, if you get a majority on your side, pass the bill. It is highly important to have a majority on your side when you want to legislate. (Laughter.)

Now, there are two elements of cost that enter into this merchant-marine business, one is the original cost of building the ships, and the other is the cost of operating them. Foreign ships are successfully competing with us because they get subsidies, and, also, because labor is cheaper in the ship yards of the old country, in Belfast and Scotland, than in this country; and because when they come to operate their ships they can command sailors at less wages than any American is willing to work for. I want to prove that, and when I have done so I have made the same case for the intervention of the Government to protect that industry, that we made when we argued, year after year, that the true policy was for the Government to protect the workingmen of this country against the pauper labor of Europe by levying tariff duties that would equalize the disparity in wages.

First, then, as to the cost of production. Our Committee on Commerce most carefully investigated that subject, and the result of their investigations is typified by what I am about to read to you. This is simply one case out of many

that were investigated and reported. I read you a letter from Mr. B. N. Baker, president of the Atlantic Transport Line, one of the largest of the American companies. It was addressed to Mr. Chamberlain, Commissioner of Navigation, two years ago, when the Senate Committee was engaged in this work, and is as follows :

“ Referring to my letter of March 16th, 1901, and replying to your request with regard to the relative differences in the cost of ships, our company at present have contracted for two ships with Messrs. Harland & Wolfe, Belfast, one of which will be completed in the spring, and the other a little later, say during the summer, of exactly the same size and dimensions, in all particulars, as two ships we have contracted for with The New York Ship Building Company. The cost of the English built ship, as near as possible, we having just completed two of exactly the same size, dimensions and speed, will be about \$1,419,120, and the same identical ship built at the works of The New York Ship Building Company will cost us a little over \$1,840,000.”

The difference in the cost of these ships, it will be seen, was about \$400,000. That is not somebody's theory ; that is an official statement made by the President of the Transatlantic Transport Company, who has had wide experience in the building of ships, and who shows that it cost his company \$400,000 more to build a certain ship in this country than it cost to build it in the other country. Why is that ? Because the labor is cheaper over there. The result is that the shipyards on the other side, as shown by our investigations, are flourishing, while ours, so far as ships for the foreign trade are concerned, are languishing, for they never give such an order here except when there is a necessity for haste. Our shipyards, in so far as they are flourishing, are engaged upon our lake and river and coastwise ship building interests.

That illustrates to you the difference in the cost of construction.

Now, as to the cost of operation of our ships and those of foreign countries. Here is what the Committee reported :

“Based upon an examination of the monthly pay-rolls of twenty ocean steamers in foreign trade, American, British, German and Scandinavian, arranged from Trans-Atlantic mail steamers of the highest type, the total monthly payroll of 1,508 men, on American steamers, \$56,116 ; 1,504 men on British steamers, \$39,209 ; 1,507 men on German and Scandinavian steamers, \$27,047. The average monthly pay is, therefore : American, \$37.21 ; British, \$26.07 ; German and Scandinavian, \$17.90.”

Now you understand why it is that our merchant marine, unaided, has been driven off the seas, and why it is that it cannot be restored without help. To command the services of sailors on our ships, we must pay \$37 and a fraction per month to each man ; Great Britain pays her men \$26 and a fraction, and German and Scandinavian sailors receive \$17 and a fraction.

We cannot compete against that unless we compel our people to accept lower wages. And the Republican party never favors the reduction of wages. (Applause.) One of the great objects of the protective policy was not only to protect our industries and make this country greater in that respect than any country on the face of the earth, but to give the wage earners wages enough to support their families, and educate their children, and have some of the luxuries of life, and in that way make them love this country and be ready to stand for its defense in battle if need be. (Applause.)

And yet Mr. Clarke criticises Senator Hanna for advocating a bill like that ! Do you want that kind of man to represent the State of Ohio in the Senate of the United States ? (Cries of “No.”) No ; nearly everybody knows now that you do not, and they will all know it after the election. (Applause.)



I have been a great believer in our merchant marine. I believe we ought to be willing to resort to any honorable means to restore it. It is disagreeable to think that you may sail all around the globe and hardly ever see an American flag floating over a merchant vessel. Go into a foreign harbor, and you will see the German, British, French, Russian and Norwegian flags, everybody's flag except our flag, only now and then will you see one; and that is because we carry less than ten per cent. of our own business, and do not carry any per cent. of anybody else's business. If you keep this Republican party in power a little longer, and keep Senator Hanna where he can do us effective work, that will all be changed, so that when you go abroad—and I hope you will be able to go—and sail around the globe, your heart will swell with pride, and your cheeks will mantle with pleasure, as you see the Stars and Stripes on ship after ship in every harbor of the world. (Cheers and applause.) The prettiest thing that a man sees when he goes abroad is the American flag; at least that is what people tell me, and I can understand how it is so.

There is another work Senator Hanna has been doing which ought to be brought to your attention, and ought to be impressed upon the people of Ohio, now called upon to pass judgment upon his claims for re-election; that is his work in connection with the inter-oceanic, or Isthmian canal. For more than a hundred years that subject has been, in one way or another, under consideration, and for more than fifty years we have been very earnestly concerned about it, and have been endeavoring to secure legislation and treaties authorizing the construction of a canal across the Isthmus of Panama. But we never got thoroughly aroused to the necessity for it until the Spanish-American war came, and the *Oregon* was on the Pacific side, and we had need for her over on the Atlantic side, where Cervera was

threatening us with his great fleet, which, however, did not turn out to be as great as we thought it was. (Laughter.) Our hearts beat with anxiety while our ships down about Cuba were looking out for him, and while the *Oregon*, not crossing the Isthmus through a canal, was sailing down the South American coast thousands of miles around the cape, through tempestuous seas and inclement weather. Knowing that it would take weeks of time, as it did, with painful suspense we watched, day by day, for news of the *Oregon* on the one hand, and the approach of Cervera's fleet on the other. Finally she got around, and got there in time to do her share of the business. (Laughter.)

But every American saw then, as never before, the necessity of an Isthmian canal, and we determined that we would have one. We took the subject up for investigation and the first thing we discovered was, that we were tied up in that old Democratic Clayton-Bulwer treaty with Great Britain, that required us not to move hand or foot except in co-operation or copartnership with Great Britain; with Great Britain's permission; that was the Democratic idea of how we should build a canal; have somebody help us. That might have been a good idea in that day, when we were young and weak and poor, but after fifty years of Republican administration, we felt that this country had grown out of that, and we did not want to have any copartnership with anybody, and we did not want to engage in that or any other world-wide enterprise of such majestic character as that, by anybody's permission. So we first invited Great Britain to make a new treaty with us. After several months of effort we got it. Great Britain was rather slow to agree to what we wanted, but finally she did agree. The first treaty negotiated, however, was not satisfactory; it continued, by express provision, certain provisions of the Clayton-Bulwer treaty, I hope I

may be pardoned for saying that I shall always remember with a great deal of pleasure, that it was upon my motion that that treaty was amended so as to abrogate the Clayton-Bulwer treaty and get rid of it. England would not agree to the treaty in its amended form. We then insisted upon another treaty, determined if we did not get it that we would declare the Clayton-Bulwer treaty at an end and go ahead and build the canal anyway. On this Western hemisphere the United States of America, at least while the Republican party is in power, is and shall be the dominant power. (Applause.) We have the men, and we have the money too. Finally Great Britain, seeing we were in earnest, agreed to an abrogation of the Clayton-Bulwer treaty by ratifying a new treaty with us which made us free to proceed. Then came the question of routes.

I had supposed that the Nicaragua route was the only one feasible. The French had undertaken to build the Panama Canal, and had spent millions and millions, which seemed to be only wasted, for they had abandoned their work. But, recognizing that it would be a great expenditure, we thought, before entering upon the work, we should send a commission down there and have them carefully examine and make report to us upon the relative merits of the various routes, so we provided for the appointment of a commission, and that commission was appointed by President McKinley, one of his last acts in connection with the present wonderful development of his country. The commission, with Admiral Walker at its head, and some of the most distinguished engineers of the country as members of it, made an examination of all these routes and made a report, and upon that report and other testimony we determined in favor of the Panama route. I wish every one here had opportunity to read all the literature upon that subject ; there is a great deal of it ;

it would keep you pretty busy all winter. But we plowed through it, and mastered it, as well as we could, and finally agreed, a majority of the Senate and House, that the proper route for us to adopt in constructing the canal was, not the Nicaragua, but the Panama. Now, why? It is a very interesting story. The Panama route is a longer route, as you sail from New York to San Francisco, by about five hundred miles, speaking in round numbers, and that was a serious objection to it; but when we came to look into it, we found that while by that route you had to sail a greater distance in making such a voyage, you could pass through the Panama route in eleven hours, while it took you thirty-three hours to go through the Nicaragua route. In the second place, we found that the Nicaragua route had no adequate natural harbor facilities; that on the Atlantic side the harbor was not only inadequate, but the trade winds blew into it, and the sand at the bottom of the gulf at that place, shifting sands, constantly filled it up, so that it would require constant dredging to maintain it. On the other hand the Panama harbors were adequate and required practically no expenditure of money to make them answer our purposes. We found, in the next place, that the curves in the Nicaragua route were twice as sharp as the curves in the Panama route, and that was a serious objection to it. We also found that the Nicaragua route can never be sunk low enough in its interior portion to make it a sea level canal, while the Panama, by further expenditures of money, can be made a sea level canal, so as to dispense altogether with the use of locks and dams. We found, also, that it will require \$1,350,000 more money every year to maintain the Nicaragua route in serviceable condition than it will take to maintain the Panama. And further, we found that in this Nicaragua route there is, as you are aware, a fresh water lake about midway thereof, and, that there



are in that lake a half dozen or more "extinct" volcanoes and one or two not extinct. (Laughter.) We happened to be considering this subject just after that terrible disaster on Martinique Island in which were destroyed thousands of lives by the action of an "extinct" volcano, marked "extinct" on the maps published just one year before that time. That made us distrustful of "extinct" volcanoes. If one should happen to go off in the Nicaragua lake, we might still have a route, but we would probably not have any water in it. I need not argue that if you want to sail ships in a canal, it is highly important to have water there. (Laughter.)

A good many people seem to think that when a man goes to Congress he has quite a nice, easy job. But I tell you that if he does his duty he is the hardest worked man in the country. Senator Hanna did his duty. He did it in all things, but particularly in this. He waded through and investigated this subject, studied all these questions, brought all his abilities to bear on them, and, in a speech of remarkable power, presented all these matters, and largely as a result of what he did, we turned our backs on the Nicaragua and adopted the Panama route. We then ratified a treaty, which had been negotiated and sent to the Senate, with Colombia, through whose territory this canal was to pass, complying with all the terms, conditions and requirements that they exacted of us, as we supposed; we sent it down to them, but they, like some of those South American people frequently do, seemed to have come to the conclusion that maybe they did not get as good a bargain as they might be able to drive, and so they refused to ratify it, but it is my opinion that at no distant day they will find out they have made a mistake, and in due time that treaty or some other will be ratified and then we will go to work and build the canal; and it will be a great monument, to stand through time, for years and years to come, to the ability and patriot-

ism of the Republican party, and as one of its champions also, of your distinguished Senator Hanna. (Cheers and applause.)

This will be a great work that will reflect great credit on all who help it along.

We are not going to leave you out altogether, my Democratic friends. You did not have much to do with the treaty, except to vote against it, as it is your custom usually to do about such matters, but now your chance is coming, and we are going to be generous with you. We intend to let you help us dig it. (Laughter.) That is a job that will suit you exactly (laughter), one you are well qualified for. Thus you will have the glory of helping to construct and put into operation that great majestic world work that the Republican party is the author of. (Applause.)

Now, my fellow-citizens, do you think Senator Hanna ought to be kept at home, or returned to Washington, as the result of this election? Do you think he should be made to give way for Mr. Clarke by the people of Ohio whom he has served so well? (Cries of "No.") I know you do not, and that your verdict will be his overwhelming vindication. When you have elected Myron T. Herrick to take the place of Governor Nash, to carry forward the measures which have made his administration so distinguished, and have elected Senator Hanna to go back and complete this work in which he has been engaged, we will be ready to head the column next year for the nomination and election of Theodore Roosevelt for another four years. (Applause.)

He is an ideal President. He speaks right out, he is vigorous, and has no beliefs to conceal; you can always find out his opinions on any subject; not because of any disregard for the consequences, or the feelings of others, but because of the regard he has for the truth, for sincerity,

and for its sacred performance and discharge of his high duties.

A few weeks ago some trouble arose with the labor unions about the discharge and restoration of some man who had been employed in the Government Printing Office. The labor unions made a demand upon the President, which he interpreted to mean that he must meet their wishes, that he must discriminate between American citizens, between those who belong and those who do not belong to organizations of labor. The labor unions claim to have two millions of voters in their membership, but that fact did not affect his action. It did not take him a moment to settle the matter. He said, "I am President, not of the labor unions, but of the people of the United States, and the working people, and every working man, whether he belongs to labor organizations or not, shall have a fair chance and a fair deal while I am President." (Applause.) They then talked of making war on him. I don't know whether they will or not, but as their friend I advise them not to do it. (Laughter.) I once heard a man say a thing that I thought there was a good deal of truth in. He said, "The American people will stand a bad thing a long time, but when it gets to be d—d bad they will put an end to it in a hurry." (Laughter.) I do not adopt his profanity, but I incorporate it out of regard for a truthful reproduction of what he said, and in order that you can have the benefit of his emphasis.

When there arises a question about the rights of a private citizen, especially the rights of a workingman, you will find the American people for fair play every time, whether he is an organized or an unorganized man. Whatever labor asks for, we gladly grant, because we are all laboring men. I worked as hard on a farm, when I was a boy, as any walking delegate has ever worked. I know the toil and privation of the workingman; I know what he undergoes,

and he has my sympathy, and whenever I can go to his relief, within the limitations of the law, and with due respect for the rights of others, I am only too glad to do it. Whatever he wants he gets, when he is within these limitations. When he gets beyond them it will be different. And no greater mistake could be made by the representatives of organized labor than to seek to intimidate those in public life in order to force measures that would prejudice the rights of any American citizen; especially if they are dealing with Theodore Roosevelt, for he has no fear of anything, unless it be failure to do his duty. (Applause.) I am for him because of that. He is a man who speaks out plainly what he thinks, if he knows, and if not, he will investigate and answer as soon as he can. He may disappoint you, but he will never lie to you at any time or in any way. The humblest man in this country is safe under the protection of the law, in so far as he has authority to execute it, while he is at the head of the Nation. No matter how high or powerful a man may be, he will have his full rights, but he will have no more. It does not make any difference to him whether it is a gigantic trust, or a walking delegate, he will tackle him all the same. (Laughter.)

He has been a great President; he took up a great work, and he has successfully executed it. He has done his duty in a way not only to command the confidence of the American people, but to excite the admiration of the whole world. He will be our candidate next year, and I would like to see the Democrat who will run against him. (Applause.) I would like to see how he will look after the election.

When I was a boy and lived over here near Hillsboro, there came along an animal show, and my father took me to it. As the show broke up and we were going away, there was a sudden excitement and everybody rushed to see some-



thing—I didn't know what. I asked my father what they were running for. He said, "They are running to see the man the elephant stepped on." (Laughter.) They saw him but there was not much left of him. This man who runs against Roosevelt next year will look like the man the elephant stepped on. (Laughter.) And that, my fellow-citizens, because he does things and the people have confidence in him, and admire him and love him both as a man and as a President. (Applause.)





*The Business Side of Some Political Problems.*

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SPEECH  
OF  
SENATOR FORAKER  
AT  
Annual Dinner of the Pittsburg  
Chamber of Commerce.

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HOTEL SCHENLEY,  
TUESDAY EVENING, NOVEMBER 24, 1903.





GENTLEMEN :

This is a non-partisan occasion. I would not violate its proprieties by discussing any political question from a partisan standpoint.

What I shall say will not, therefore, have any reference to the attitude of the respective political parties toward the subjects I may mention, but will be prompted solely by the business aspects which they suggest.

Speaking in this way, I shall say something about our surplus production, foreign markets, the improvement of the Ohio River, the construction of an Isthmian Canal, the recognition of the Republic of Panama, our acquisition of Porto Rico, Hawaii and the Philippines, and what we should do with them.

The grand aggregate of the production of the American people amounts to the almost inconceivable sum of 20,000 millions annually. For this enormous production we have a home market that consumes about nineteen-twentieths of it, but for more than 1,000 millions of this production we must find foreign markets.

The development of our resources, the multiplication of our industries and the augmentation of our productive power are rapidly increasing.

Consequently the time is not far distant when we shall have, if we go on at the present rate of progression, a far larger surplus to sell abroad than we now have.

#### FOREIGN MARKETS.

The question of foreign markets is, therefore, one that should be giving us some concern, for it is one that affects directly, not only every business man, but also every farmer and every wage-worker throughout the length and breadth of our country.

Unless we can find markets for our surplus we will not long produce it, for men cannot afford to produce what they cannot sell.

Accordingly as we fail to find foreign markets for our surplus its production will be restricted, involving thereby a corresponding restriction in the further investment of capital, the extension of industries and the employment of labor.

This suggests a consideration of the world's markets and our opportunities with respect to them.

Such consideration is more intelligent if we recall the fiscal policies of the several leading countries.

Sixty years ago England, under the leadership of Mr. Cobden, adopted the policy of free trade, upon the theory that she could, by persuasion and otherwise, fasten that policy upon the rest of the world, and that as a result of it she would become the workshop of all the nations.

In view of the fact that she was without free raw material, except coal and iron, and had a dense population, it was a wise policy for her provided she could also thus control the policies of other countries.

For a time all went as she desired, but in 1861 the United States, not desiring to continue longer to "dig and delve and plow for Great Britain," to use the language recently employed by Mr. Chamberlain, adopted a protective tariff policy.

The results of this policy were so stupendously successful that Germany, France and other leading commercial nations have followed our example, until to-day all the countries of Europe, and practically of the world, are protective tariff, except only England.

And in England a great political struggle is now in progress to change her fiscal policy from free trade to protection.

There is much to indicate that, at least ultimately, it will be successful, because not only is the advantage of argument in its favor, but there is an ever present object lesson before the people of Great Britain that can hardly fail to have that effect.

It is referred to by Mr. Chamberlain in one of his recent speeches as the commercial invasion of Great Britain by the United States.

He says with respect to that invasion: "I do not blame the United States, but I appeal to Englishmen to say whether they will adhere to the old system or adopt another which will prevent the American invasion."

If England changes her policy so as to prevent the American invasion, as she probably will, the result will be a restriction of what has heretofore been one of our best and greatest markets.

When England shall have taken this step we shall be more than ever limited in the markets across the Atlantic to the mere deficiencies that the countries of Europe will be unable to supply, and those deficiencies, under the stimulus of protective tariff policies, will most likely decrease.

I mention all this with particularity because it emphasizes the necessity as well as the propriety of our looking elsewhere than in that direction for new and increasing markets that will absorb our constantly increasing surplus.

### THE FAR EAST.

There is only one place to find them, and that is in the far East. Our Pacific coast is nearer those markets than any of our competitors. In that fact we have an important advantage for all the western part of our country. Under existing conditions this advantage cannot be fully shared by the interior and eastern portions of the country.



The great questions of markets that concern us therefore are :

First, how can we bring the whole of our country to a fairly equal enjoyment of that advantage of relative nearness now confined to the Pacific Slope and,

Second, how can we best develop and build up American trade in the Oriental countries ?

With respect to this whole matter we should and do have an intelligent policy.

In the first place, not alone for the purposes of National defense, but for commercial purposes as well, we propose to construct an Isthmian Canal ; and in order that the benefits of it may inure as nearly as possible to our whole people, we propose to improve the Ohio River and all other important tributaries to the Gulf.

#### THE OHIO RIVER IMPROVEMENT.

With a stage of water in the Ohio River never less than nine feet this whole Ohio Valley will be practically as near to China and Japan for commercial purposes as the Pacific Slope, and be on practically fair terms of equality with the Atlantic seaboard for European trade, and thus will the whole country be put upon substantial equality of advantage with respect to foreign markets.

I shall not take time to discuss the Ohio River Improvement, because, in the first place, you are already familiar with it ; and, because, in the second place, I refer to it only to show how as a part of a great policy it fits in with a general plan of intelligent public work.

I dismiss it, therefore, with the single remark that you, who are directly interested in it, should see to it that it is so far pressed upon the attention of Congress as to secure its further progress and completion concurrently with the

progress and completion of the Isthmian Canal. When the one is finished and ready for use the other should be.

### THE ISTHMIAN CANAL.

Neither shall I stop to discuss the necessity for an Isthmian Canal. This has been under consideration, in at least a general way, for almost a century, and in a rather special way, from time to time, for the last fifty years.

All classes and all sections seem to be now alive to its importance, and in earnest about its construction, particularly so since our experience with the Oregon at the beginning of the Spanish-American war.

As the people awaited the arrival of that ship in Cuban waters with fear and apprehension that it would come too late to join in our defense against the fleet of Cervera, they settled it irrevocably that the Canal should be built without unnecessary delay, and that it should be an American enterprise, built by the United States Government, with American money and under American control.

Having reached that determination the first thing in order was to clear the way for action.

In 1850 the Clayton-Bulwer Treaty between England and the United States was adopted by which the two countries were committed to a sort of co-partnership in the enterprise.

On this account we could not proceed without the consent of England unless that treaty could be abrogated or superseded by another.

It was a long tedious negotiation, but finally the Clayton-Bulwer Treaty was superseded by the Hay-Pauncefote Treaty under which we were freed from all embarrassing obligations.

In the meanwhile, recognizing the great importance of the subject, the President was given authority to appoint a

commission to visit the Isthmus and make a careful examination of all the routes that have been proposed, and report as to which was the most feasible.

At the same time agreements were entered into by protocols, duly signed, with Nicaragua, Costa Rica and the United States of Colombia, setting forth, in general terms, the conditions upon which the routes through their respective countries might be utilized by the United States.

### THE PANAMA ROUTE.

The report of the commission was of such character as to limit our choice to the Panama and the Nicaragua routes, and after careful investigation and thorough discussion, the Congress adopted the Panama in preference to the Nicaragua.

It may not be without interest to mention some of the reasons for this preference. While the engineering difficulties of the two routes seem to be substantially equal, the Nicaragua route had in its favor a better climate, and for a voyage between New York and San Francisco a line about 500 miles shorter.

But the Panama route has in its favor the fact that the canal itself when it is constructed will be so much shorter that a ship can pass through it in eleven hours while it will require thirty-three hours to pass through the Nicaragua Canal.

The Nicaragua was at the further disadvantage of having curves much sharper than those of the Panama.

In addition the harbors of the Nicaragua at both Greytown and Brito were inadequate in their natural condition, and it was estimated that the proper maintenance and operation of the canal over that route would cost annually \$1,350,000 more than it would cost over the Panama route.

Again the Panama can be made, if we see fit to spend the additional money necessary, a sea level canal, thus getting rid of all locks and dams with their consequent delays, while Nicaragua never can be made a sea level canal at any cost.

These are only a few of the advantages that induced us to decide in favor of the Panama route.

### THE TREATY WITH COLOMBIA.

When that selection was made negotiations were at once commenced between the Government of the United States of Colombia and our Government, on the basis of the protocol previously entered into, for a treaty under which we should be granted all necessary concessions and rights.

In this negotiation it developed that the Government of Colombia was not willing to embody in a treaty the terms it had named in its protocol. It demanded a number of disagreeable changes. Among them an increase of the cash payment from seven to ten millions of dollars.

Our Government desiring to deal fairly and generously in the matter, and anxious to make progress, finally yielded, and a treaty was signed which was supposed to be in all its terms and conditions perfectly satisfactory to Colombia, for in that treaty every demand insisted upon by Colombia was granted.

After a long debate the treaty was ratified by the Senate of the United States. It was then sent to the United States of Colombia for ratification.

After months of delay it was finally rejected by that Government without any formal consideration, and without any explanation, except only that which was informally announced that the Government of Colombia had concluded that instead of the \$10,000,000 which she was to receive under the treaty, we ought to pay her at least \$25,000,000,



and that other terms and conditions should be exacted to which it would be impossible for our Government to agree.

Under the legislation enacted by the Congress the President had a right after the lapse of a reasonable time to adopt the Nicaragua route, if he found it impossible to secure the Panama route, and proceed with its construction.

### THE REPUBLIC OF PANAMA.

Before he had taken any action under this provision the Department of Panama, which was a part of the territory of the United States of Colombia, on the third day of this month, seceded and set up an independent government. Our Government, four days later, on the 7th day of November, recognized that government as the *de facto* government of Panama, and has since received its minister and has recognized it as a government *de jure*.

It has been said that President Roosevelt made indecent haste to grant this recognition. There is no excuse for such a statement. He did not waste any time; he never does; neither did he act without precedent.

In a number of cases our recognition of new governments has been quite as prompt, and in some of them even more prompt.

When in 1871 the people of France deposed the Emperor, Napoleon III, and instituted a republic to take the place of the monarchy, our recognition was granted the following day.

We were equally as prompt to recognize the republic established in Spain in 1873, and the Republic of Brazil when the Emperor, Dom Pedro, was deposed.

Other precedents might be cited, but these are comparatively recent and enough to serve as illustrations of what our practice has been.

In none of these cases was there any urgent necessity for

such promptness of action. The recognition was granted in each instance because all the conditions existed that are prescribed by international law as necessary to warrant such recognition; and when those conditions were found to exist delay was optional.

Those conditions are, briefly stated, that the new government shall be in control, exercising authority, and be the only government that is in control, exercising authority, to which a foreign government can apply for the protection of its citizens in the enjoyment of their life or their property, or for the discharge of any other international duty.

But the situation in Panama was peculiar, and the necessity for prompt recognition was especially urgent and commanding.

Under a treaty entered into in 1846 between the United States and New Granada, as Colombia was then called, for good and valid reasons and considerations, the United States Government obligated itself to protect transit across the Isthmus by railroad or canal from any kind of harm or interruption.

This stipulation imposed upon the United States a serious and responsible duty, which has continued from that time until now, and which must continue so long as that treaty remains in force.

In recognition of that duty, and to discharge it in the interest of travel and commerce the United States has repeatedly landed its marines and enforced law and order along the line of the Isthmian Railroad, and this it has done not only on its own motion, in recognition of its duty, but also at the request, and always with the consent and approval of the authorities of Colombia.

Panama comprises all the territory of the United States of Colombia on the isthmus. It is the only part of the soil of the United States of Colombia to which our duty attaches,

and our duty does attach to that particular territory, because there is where the Isthmian transit which we are to guard is located, and that duty will remain confined to that locality irrespective of the question whether Panama continues a part of Colombia or maintains her independence.

It has been charged in a false and groundless way that the United States Government connived or intrigued with Panama to bring about the action she has taken. There is no truth whatever in such assertion.

Such connivance and intrigue were not only improper, but from the beginning manifestly unnecessary.

The refusal of Colombia to ratify the treaty under which the Canal was to be constructed was, under all the circumstances, not only a breach of faith towards the United States, but an incalculable outrage upon Panama. By such action, had Panama remained a part of Colombia, it was made impossible for the United States to construct the Canal over the Panama route.

We were thereby driven, if we constructed the Canal at all, to the Nicaragua route, to the irreparable prejudice, loss and injury of Panama.

It is no wonder that under such circumstances, provoked by such an act, Panama should take the action she did. It would have been an injustice to herself not to have taken it. She did not need any urging. On the contrary, she at once threatened to resent such ill treatment by the action she finally took. Only Colombia seems to have been blind to the course of events for which her action was responsible. But however all that may be, the fact remains that Panama has seceded, and has established an independent government, which is, and was when we recognized it, in complete control of her entire territory. There was at that time, and there is now, no vestige of the Colombian government within the territory of Panama, no soldiers; no constabulary,

no officials, no representatives of any kind of Colombian authority, and there is every prospect that the same conditions will continue as they are now.

Under such circumstances, in view of our treaty obligations, and the compulsion we were under on that account to be present in Panama when necessary to preserve the transit from interruption, it was not only our privilege, but our necessity and duty, to recognize the new republic, since it was the only government with which, in the discharge of that duty, we could have official relations.

The result of all this is that Colombia, for reasons of her own—it is not necessary to characterize them—they speak for themselves—has forfeited her opportunity, and has lost all that we were anxious to generously give her. It is through no fault of ours that this misfortune has befallen her, and there is no reason why, in view of all that has transpired, we should have any concern on her account.

We have already signed with Panama a new treaty. It is far more favorable to us than the one Colombia rejected. In due time, it will, no doubt, be ratified, and it is hoped that the day is not far distant when the construction of the canal will be actually commenced.

That construction will require an investment of not less than \$200,000,000. It may amount to three or even four hundred millions of dollars, but no matter what the cost, if it be practicable, as our engineers report, we will construct it.

It will be a gigantic work. It will be of the highest benefit to the whole commercial world, but it will be of special benefit to the United States not only for purposes of commerce, but also for purposes of national defense.

It would be folly for us to embark in such an enterprise without taking every proper precaution to safeguard it by placing ourselves, so far as we may in a position to defend and protect it under all circumstances.



We are now happily at peace with all the world. We hope so to remain, but wars come unexpectedly. No man knows what the future may unfold. Wise statesmanship provides against all serious possible contingencies.

Hence it was that when in the midst of the Spanish-American war we were taught the lesson of the Oregon, and determined to construct that canal, we at once also determined to put ourselves, as fast as opportunities offered, in position to protect and defend it after it was constructed.

## HAWAII.

The first step in that direction was the acquisition of Hawaii. We did not annex those Islands because we needed, or wanted, more territory, merely as territory ; nor because we wanted to rule over more people. Neither did we imagine that we would derive any special or important profit from any commerce we might have with them ; and, least of all, did we think of exacting from them any kind of tribute.

Such considerations did not enter into our minds. Great national and international transactions of that character are not measured by dollars and cents. They are placed on broader and higher grounds.

We annexed the Hawaiian Islands because they belonged in a broad political sense to our sphere of influence and operation, and because they desired and asked for annexation, and because the time had come when either we must take them or allow England, Germany or some other power to take them ; and that we could not afford because of their commercial and military strategic position.

They are so situated, twenty-one hundred miles out from San Francisco, in the Pacific Ocean, as to constitute in the possession of another power a serious menace, or in our

possession, a complete defense not only for our Pacific Coast generally, but especially for an Isthmian Canal.

One glance at the map shows that it will be impossible for any hostile fleet to conduct offensive operations against either so long as we retain them and maintain there a naval station as a base of operations.

Of how much value that possession is and will be to this country no one can compute with accuracy, but in the mere matter of money, measured by what it will save us to be thus guarded and protected from attack, its value is incalculable, to say nothing of the influence and prestige it affords.

The same is true as to Porto Rico and the military and naval reservations and stations we have provided for in Cuba.

If we are to construct an Isthmian Canal we must provide for its defense not only on the Pacific side, but also on the Atlantic side.

With Porto Rico under our flag, and with the great naval stations and military reservations for which we have made provision in Cuba, we will dominate and control the Caribbean Sea almost as completely as Gibraltar ever controlled the Mediterranean, while with the acquisition of the Danish and other islands of the West Indies that are naturally and surely gravitating toward us, that control will be made practically complete.

For great purposes of this character, to provide for the national defense, and to make it possible with safety to construct a great world-work for the benefit of the world's commerce, as well as our own, all our recent acquisitions have been made.

They cost but little—measured by their importance practically nothing—but the question of their cost was scarcely considered. We annexed them because they were deemed

essential to the proper execution of a great policy, founded in wisdom and patriotism, and without thought or purpose of greed, selfishness or imperialism.

### THE PHILIPPINES.

In precisely the same spirit the Philippines were acquired. We not only need an inter-oceanic canal to enable us to get to the Orient, but we need the Oriental markets when we arrive there.

The Philippine Islands stand in the immediate front of practically one-half the inhabitants of the globe. Those people are comparatively just beginning to trade with us. The possibilities of their markets can scarcely be exaggerated.

Our commerce with them, although yet in its infancy, has already become of great importance. It is rapidly growing. It is now only a mere promise of what it will become, if we but rightly improve our fair opportunities.

To improve our fair opportunities, we must maintain and enforce our right to trade there on equal terms with the most favored nation. In other words, we must continue to insist upon an open door for the United States as to Korea, Manchuria, China and every other place in all that part of the globe.

We do not want any favor, but we do want equality of right, and we will be derelict as a government in our duty to this country, its farmers, its manufacturers and its wage workers, if we fail to secure that equality of right as against all who would deny it, no matter what may be the trouble or the cost thereof.

There has been manifested at times recently a disposition to close some of the doors against us, especially in China and Manchuria, but the wise diplomacy and the resolute and forceful determination of the Government at Washing-

ton have proved sufficient so far to prevent its consummation.

The value of these diplomatic victories has been incalculable. They have redounded not only to the credit and honor of our Government, but they are fraught with blessings beyond computation to all classes of our people and all sections of our land. They have been won largely because of the justice of our demands, but also, in large degree, because of our well-known ability and willingness to compel fair treatment if it should be denied.

The whole world knows, and at least since the Spanish-American war, fully appreciates, that the American people have the genius and the courage to conceive, formulate and execute great national policies. So long as we maintain this reputation our fair and reasonable demands for fair opportunities will continue to be granted. Our interests in the Far East will, therefore, if we are but true to ourselves, continue to grow rapidly.

They have been for years so important that we have deemed it necessary to maintain there, even in time of peace, a squadron of the American Navy to protect them.

This necessity will become greater as time passes and our trade expands. But where will this navy be stationed? Will we have for it a harbor of our own where it can remain and go and come at pleasure, or shall it depend upon the rights and usages of comity and sufferance in the ports of strangers? Before the Spanish-American War we had no harbor or station anywhere nearer that scene of commercial activity than San Francisco. All the ports and harbors beyond were foreign in peace, and when war was declared between Spain and the United States all that did not belong to Spain, by operation of international law, became immediately neutral, and as such were instantly closed against our ships.



The effect was that our little squadron at Hong Kong was compelled within 24 hours after the declaration of war to sail out on to the high seas, there to subsist as best it might, or return to San Francisco, the nearest home port, thousands of miles from where it had been needed in time of peace, abandoning in time of war when most needed, all the interests it was there to protect, leaving them to the mercy of our enemy who was at Manila, with his ships of war, simply because we had no port or harbor of our own in which they could remain, or which they could use as a base of operations.

Either that or as an alternative it could go to Manila and strike a double blow at our enemy by destroying his fleets and taking possession of his ports.

This alternative was wisely ordered and as a result there was quickly written another brilliant and thrilling chapter of American history, and, at the same time, we secured there a port of our own which we had so long needed, but never will again lack unless we are guilty of the supremest folly.

From time to time we see estimates of the cost that has been incurred on account of the acquisition of the Philippines, the suppression of the insurrection, and the maintenance there of the military and civil governments we have established, and over against this great aggregate we see set down the comparatively minor results of close calculations of the financial profits that have been derived from our commerce with those islands.

We also see discouraging descriptions of the inhabitants of the archipelago and our troubles and trials in maintaining our authority. These are undoubtedly great. All well informed men knew they would be great when we acquired those possessions, and if only such considerations had been taken into the account we would never have consented, much less desired to make such an acquisition.

But if I have spoken to any purpose I have shown that these are only incidents attending the execution of a great, broad, intelligent, patriotic, American policy, by which it is sought to secure and maintain not only a base of operations, but an advantage, a power, and a prestige in the Orient that will make for us in the commercial rivalries we cannot avoid beyond anything that human wisdom can accurately foresee or approximately estimate.

To all who study the conditions there obtaining and the results we are seeking to achieve it must be manifest that we must not only in fact be ready at all times to enforce our just rights, but also appear at all times to other nations to be thus prepared.

For us to haul down our flag and bring away our army and navy and abandon the Philippines would be to surrender all chance for equality of opportunity in the greatest of the new markets of the world.

This would be worse than mere folly. It would be little, if at all, short of a great crime against the toiling millions in the fields and shops and factories of America; for such a surrender would sacrifice our chance to fairly share those markets and also necessitate a corresponding restriction of our productive energies and capacities.

As a mere question of world politics we could not afford any such action. It would write us down as a weak, halting and vacillating people.

Neither could we in honor take any such action, because of the obligations we have assumed, for the faithful discharge of which we will be compelled to remain there for at least a good many years to come. I cannot on this occasion discuss those aspects of the case. I refer to them only to show that they unite with our highest business interests to command us to remain where the fortunes of war have, not unfortunately, but most happily placed us.

Let us, therefore, take courage for the tasks we have undertaken, assured that if we but go forward in the paths upon which great events have set our feet there will be, until long after "our day and generation", ever widening fields for the investment of capital and the employment of labor, with a consequent increase of national wealth, happiness, honor and power that will surpass the expectations of the most sanguine believers in the destiny and ultimate greatness and grandeur of the American people.

REPUBLIC OF PANAMA.

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SPEECH

OF

HON. JOSEPH B. FORAKER,

OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

THURSDAY, DECEMBER 17, 1903.

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WASHINGTON.

1903.





SPEECH  
OF  
HON. JOSEPH B. FORAKER.

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*Thursday, December 17, 1903.*

The Senate having under consideration the following resolution submitted by Mr. HOAR—

*Resolved*, That the President be requested, if not, in his judgment, incompatible with the public interest, to communicate to the Senate such facts as may be in his possession, or in that of any of the Executive Departments, as will show whether at the time of the ratification of the treaty with the Republic of Panama, lately communicated to the Senate, Panama had successfully established its independence, had lawfully adopted a constitution, and had given authority to the persons with whom said treaty purports to have been made to negotiate and ratify the same;

Also, the population of said Republic of Panama at that time, its capacity for self-government, and the race and character of the persons composing it;

Also, whether the officials negotiating or ratifying the treaty on the part of Panama had any personal or private interest in or relation to the construction of a canal across the Isthmus of Panama;

Also, whether the constitution of the Republic of Colombia authorized the secession of Panama therefrom, and whether Colombia was prevented by the action of the United States or by any officer or force under the jurisdiction of the same from attempting to assert its authority or to prevent such secession, and what instructions, if any, had been given by the Government of the United States to such officers, whether civil, military, or naval, and whether if any action had been taken by such officers without special authority what action was so taken, and whether such action has been approved or disapproved by the Government of the United States;

Also, at what time information of any revolution or resistance to the Government of Colombia in Panama was received by the Government of the United States or any Department thereof, and whether any information was received of any expected or intended revolution before it occurred, and the date of such information—

Mr. FORAKER said:

Mr. PRESIDENT: I was about to say, when interrupted, that when yesterday morning I read in the paper an account of the proceedings of the Democratic caucus held the preceding evening I knew there was trouble ahead, for the account of those proceedings I read stated that at that caucus it had been resolved and determined that every member of the Democratic party in the Senate should vote as two-thirds of that membership should decide on every question voted upon in the Senate in every instance, except only when such a vote would interfere with the conscience of some Democratic member.

Mr. TILLMAN. Something you have not got. [Laughter.]

Mr. FORAKER. I knew then that the vote would be, under all circumstances, when a two-thirds membership had so decreed it, a unit vote. I must confess, however, that my confidence in that idea was somewhat shaken when in the course of the debate in the Senate yesterday the Senator from South Carolina, who has just interrupted me, showed such remarkable familiarity with the Scriptures. [Laughter.] I concluded then that in all probability he was the particular Senator who was had in mind when that provisional exception was made. [Laughter.]

I was prepared, Mr. President, by that account of what had occurred in the Democratic caucus to hear without surprise the remarks of the eloquent and distinguished Senator from Texas [Mr. BAILEY] in the course of his speech yesterday when he told us there would be hereafter no White House Democratic Senators; that the Democratic party, which had ruled this country for sixty years practically without interruption before the war, but for reasons satisfactory to the American people had not been allowed to govern the country since, except for a brief four years, had at last become rejuvenated, reorganized, concentrated, and that they were now prepared to go into the national contest of 1904 shoulder to shoulder, determined to carry their flag to victory.

I was not surprised, therefore, when I realized that an attack was being made in this Chamber upon the Administration, an attack especially directed at President Roosevelt; but I was surprised when I saw that attack made by the distinguished Senator from Massachusetts [Mr. HOAR]; and I believe the whole country will be surprised when they read the character of speech that has been made, and when reading it they realize the sincerity of the eloquent tribute paid to the Senator from Massachusetts by the distinguished Senator from Maryland [Mr. GORMAN], who now leads, according to popular report, the Democratic party in the Senate, and hopes to lead the Democratic party in the campaign of 1904.

Mr. President, I do not intend here in this open session to say all that I feel prompted to say about the character of the speech which has been made by the Senator from Massachusetts.

He remarked in his opening sentences that if any Senator felt as he proceeded that his speech should be made in executive instead of open session he would at any time yield, as I understood him, for that order to be made. It is possible that is a sufficient apology and explanation for him to make, entertaining the views he did, for making that speech in open session; but I submit to the judgment even of our Democratic friends, who have united for the purposes of victory in the next campaign, that, looking in a nonpartisan way, as we all should and as the Senator from Maryland [Mr. GORMAN] says he always does when we consider international questions and relations, that speech should have been made in executive session and not in the open Senate, or, Mr. President, as some one suggests to me within my hearing, it should never have been made at all. But, Mr. President, it has been made, and it is for us to consider and to deal with as we may think we should.

It ought to have been made in executive session, if it was to be made at all, not alone because it involved an attack upon the Administration, but because it involved an attack upon our country as well. There is a treaty now before the Senate with respect to this identical matter, a treaty concerning a great transaction, of which the whole world is witness. All the nations have our action under consideration. It does seem to me that it would have been the part of both patriotism and wisdom, certainly the part of conservatism, for the Senator from Massachusetts to have waited until that treaty, involving all these transactions which he has discussed, could be considered in the committee where it is pending, and then be considered here in executive session of the Senate, where international relations

and international questions can be considered without offense to anyone—

Mr. TILLMAN. Mr. President—

Mr. FORAKER. Wait a minute—and where, Mr. President, all the information called for by this resolution could have been secured just as well as here in the open Senate.

Therefore it is, I say, I criticise that speech because of the fact that any purpose the Senator could have had in mind to subserve, so far as giving information and the benefit of his views to his brother Senators is concerned, could have been subserved better behind the doors in executive session than in the open Senate, where the words spoken will be taken up and spread broadcast before the world as words of criticism coming from the Senate of the United States upon the President of the United States in this great matter. I doubt not the President has acted from sentiments and motives of the highest and the loftiest patriotism and the purest intention to subserve American good.

Now I yield to the Senator from South Carolina.

Mr. TILLMAN. I should like to ask the Senator from Ohio, who seems to be informed on this question and has assumed the rôle of championing the President's action, defending and explaining it, if he knows, and is willing to tell the Senate and the country, anything about the authenticity or reliability or truthfulness of the reports which we read in the daily newspapers of the preparations now actively in progress by our chief of staff and his subordinates for mobilizing 5,000 American soldiers to march on Bogota? Is that all a part of the same policy as to this nebulous or baby Republic that was born in some back room? If we are going to have war precipitated by the Executive while we are trying to discuss a treaty, we ought to know it.

Mr. FORAKER. I am always glad to be interrupted by the Senator from South Carolina when he simply wants to ask a question. He has asked one now, and I should take pleasure in answering it if I could, but I have no knowledge of any such matters as his question is directed to. I have only the knowledge in regard to these matters that is common knowledge to all Senators, or at least to all Senators who seek light.

Mr. TILLMAN. Was not such information given out at the White House?

Mr. FORAKER. Nothing has been given out to me at the White House.

Mr. TILLMAN. Ah!

Mr. FORAKER. If the Senator desires any information from the White House, I suggest that he apply.

Now, Mr. President, having said that much in a prefatory way, I want to say something about the merit of this transaction which has been so severely criticised by the Senator from Massachusetts. He reads a lot of telegrams and draws therefrom an inference, which he states as his conclusion, to the effect that this Government, although denying, as it has been denied over and over again, any part whatever in any connivance or intrigue in regard to the matter, was yet proceeding in such a way that no other conclusion could be deduced therefrom.

Mr. President, as I read these telegrams in the light of our duty and obligation to Panama with respect to the transit across the Isthmus, I see no occasion to draw therefrom any inference ex-

cept only that the President of the United States was alert to do, in a patriotic way, his duty as the President of the United States.

Mr. HOAR. Will the Senator allow me to say a word?

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Massachusetts?

Mr. FORAKER. I do.

Mr. HOAR. I wish to say that the Senator totally misunderstands and, misunderstanding, totally perverts what I have either said or thought.

Mr. FORAKER. I do not know to what particular remark of mine the Senator from Massachusetts has reference, but I submit to Senators who listened to the Senator from Massachusetts that I have said nothing in answer to the speech of the Senator from Massachusetts that I was not warranted in saying; and I will add that I have not said, and I will not say here in this presence, to go into the RECORD and to be spread before the world, all that I feel I should say in answer to that speech.

Mr. HOAR. If the Senator will permit me, I do not propose to be put by the Senator from Maryland [Mr. GORMAN] or by the Senator from Ohio [Mr. FORAKER] into any false position. The Senator is welcome—and I do not think he will find anybody afraid of him—to make any comment on anything I say in the Senate that he chooses, here or anywhere else, publicly or privately. I said this—

Mr. FORAKER. Mr. President, I do not—

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Massachusetts?

Mr. FORAKER. No; I do not yield any longer—

Mr. HOAR. Very well.

Mr. FORAKER. Unless the Senator will tell me that he is going to be very brief about it. The Senator came in here and read a carefully prepared speech, which will go into the RECORD precisely as he read it to the Senate, and every Senator and all the country can see precisely what he said. What I am saying will be reported and printed in that same RECORD precisely as I say it here. I do not understand that I am saying anything about the Senator's speech that I am not warranted in saying.

Mr. HOAR. Does the Senator decline or consent to permit me to state wherein he misstates my position?

Mr. FORAKER. Well, I have such a profound respect and regard and sincere friendship for the Senator from Massachusetts that I always yield to any request he makes, but I beg the Senator from Massachusetts, if he is to interrupt me, speaking, as I am, without thought that there was to be a speech to be answered in the Senate at this time, that he will speak briefly, and let me proceed with my remarks.

Mr. HOAR. I shall be very brief.

Mr. FORAKER. I can assure the Senator that I had no thought or desire to misrepresent him. He knows that, I think.

Mr. HOAR. I can not understand the respect and regard the Senator has for me which imputes to me something which I clearly disclaimed when I spoke, and that is the kind of respect and regard my honorable friend from Ohio has for me, as is shown in what he said. I certainly have great respect for him.

I can state my point in two minutes, and anybody who doubts whether I am sincere or not, either my countrymen or my associ-



ates in the Senate, or whether I state the exact truth, will found that doubt on a belief or a disbelief of whether I state or misstate my proposition when I now reaffirm it.

I say that the President has said to the public and to the Senate that he disclaims certain conduct as unworthy of him by giving evidence to the press that the charge of it was false and by sending a message to the House of Representatives; and I called attention to the fact that the documents which he sent in failed to make that clear by not distinctly disclaiming that he had or the Administration had notice of that revolution; and that as the documents were left, it appeared that the first thing our forces had done was to prevent a lawful government from anticipating the outbreak; that I believed, from my knowledge of the character of the President, that his statement was actually true—and who does not?—and, therefore, asked him to supply the lacking information by stating on what ground the Administration proceeded in taking steps for the restraint of Colombia. That is all.

I do not propose, after thirty-four years' service within these walls, to trouble myself to contradict again an imputation to me of any other meaning, of any indirectness or artifice on my part. If the Senator from Ohio chooses to charge me with it, of course I can not help it. He will do his duty, and I will take care of myself.

Mr. FORAKER. Mr. President, I am delighted to know that the Senator from Massachusetts is not afraid of anybody. [Laughter.]

Mr. HOAR. I said I did not think the Senator would find that anybody was afraid of him.

Mr. FORAKER. I do not know of any reason why the Senator should talk of being afraid of anybody. He made a speech, and I am undertaking to make some answer to it. I am undertaking to answer him under embarrassing circumstances and without the slightest preparation. I know nothing about the Senator's speech, except the language as I learned it from his lips as the speech fell from them. I submit to every Senator here that I have not, no matter what the Senator from Massachusetts has just now seen fit to say, misrepresented or perverted a single idea that he expressed. Certainly I have not, so far as I have understood him. A man can not make any headway in argument among intelligent men by perverting what is said by his antagonist, especially when it has been said in almost the same minute in which the answer is made.

I regret that the Senator from Massachusetts does not appreciate my respect and my esteem. But yet, Mr. President, I can not understand how anyone can escape from what I said I understood to be the effect of his speech, that from the telegrams read the Senator inferred a conclusion that was in direct contradiction of the statement of the President of the United States.

The President has stated that there was no connivance and no intrigue, and yet the Senator from Massachusetts, reading these telegrams, talks about gestation, which seems to have brought forth an idea in his mind that the President shall submit proof to him that he was telling the truth when he made the statement that he had not connived and had not intrigued. But I shall pass from that. The remarks of the Senator will be in the RECORD, and my remarks will be there precisely as I have uttered them,



and Senators can judge, and all who read can judge, whether or not the Senator from Massachusetts has any cause to criticise anything I have said.

What I was proceeding to say when the Senator from Massachusetts interrupted me was this, Mr. President: That the situation in Panama was one as to which there was common knowledge to all informed newspaper-reading people throughout this country. When we ratified the treaty providing for the construction of the canal across the Isthmus and sent it to the United States of Colombia for ratification, we did that pursuant to other steps which had been previously taken. Let us recall what they were.

In the first place, Mr. President, when it was resolved that we would build an isthmian canal, negotiations were entered into not only with Colombia but with Costa Rica and with Nicaragua. Then protocols were signed with all those countries. A protocol was signed with Colombia, one condition of which was that we should pay her \$7,000,000 if finally we determined that we would accept the Panama route. We then undertook the negotiation of a treaty with Colombia in accordance with the terms and conditions of that protocol; but when we had turned from the Nicaragua route, and had accepted the Colombia route, and had expressed our preference for it, Colombia did not seem willing to make a treaty with us in accordance with her protocol.

Instead of a cash payment of \$7,000,000, she demanded the payment of \$10,000,000 in cash. She exacted from us other terms and conditions that were severely criticised in this Chamber, but finally, after a long debate, the treaty was ratified. We sent it there. That treaty embodied every demand that Colombia had made of us, whether of money or other kind of terms and conditions. What happened? Instead of ratifying it with these increased payments and other terms and conditions that she had demanded and we had generously granted, months passed, when finally the treaty was rejected unanimously, without any consideration whatever having been given to it by the ratifying power of Colombia.

No official explanation was offered to this Government for such action. The only explanation ever given was an informal explanation given out by a distinguished citizen of Colombia, who apparently journeyed all the way from Colombia to New York to give us that information. He gave it in the shape of a newspaper interview, in which he announced that they could not agree to the treaty unless we struck out \$10,000,000 and inserted \$25,000,000.

Mr. MORGAN. Mr. President, may I ask the Senator a question about that?

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Alabama?

Mr. FORAKER. Certainly.

Mr. MORGAN. It was with President Marroquin with whom we negotiated the treaty. That is admitted, I suppose, by everybody. Was the Congress of Colombia ever in any way consulted or committed to the Hay-Herran treaty before it was ratified by the Senate of the United States?

Mr. FORAKER. The treaty was negotiated in the ordinary way, as I understand it. I do not suppose it was submitted to them before it had been submitted to us.

Mr. MORGAN. That Congress was not even in existence at the time.

Mr. FORAKER. I understand it was not.

Mr. MORGAN. And I do not understand how the Colombian Congress by rejecting that treaty could be guilty of a breach of faith.

Mr. FORAKER. I am reciting the fact that they did reject it. I have no time in this hurried debate to go into detail and elaborate any of these matters. That is what was done.

The very moment we sent that treaty to the United States of Colombia for action there, for them to ratify it, there was evidenced a disposition unfriendly to it, a disposition that grew stronger and stronger in its manifestation, until finally the rejection came.

What did that mean to Panama? Take the map and look at it—a mere isthmus, as it is properly called. Colombia situated in South America; Panama as disconnected as a State could possibly be, both by water and by the nature of the land that intervened. To that little Department of Panama the construction of the canal at that point meant the most important advantage to her that you could possibly conceive. For that canal not to be constructed there, but to be constructed at some other place, meant the most positive disadvantage to her.

She was intensely in favor, therefore, of this canal being constructed at that place, and in favor, therefore, of the ratification of that treaty. But despite all she could do the treaty was rejected. At once it became known through the newspapers—not by any agent sent here or sent elsewhere, but as common knowledge, reported by the Associated Press and otherwise—that the people of Panama were in a state of discontent and that they would not submit to such disregard of their interests by the Government under which they were then living. It became at once known, in other words, that she was proposing to secede and set up an independent government for herself.

That was published everywhere. I read of it. I spoke about it in public speech during the campaign in Ohio. No agent came to the President of the United States. The President of the United States sent no agent to Panama. It was not necessary. Panama was acting in her own interest. She was exercising her right to object to the action of her Government, and her Government persisting in wronging her, she had a right, if she saw fit, to go into rebellion.

In other words, weeks before she declared her independence it became known that she would take that step—not officially, but it became known to every man who studied the situation and considered what human nature would do under such circumstances. The clouds were gathering. Should the United States, through its Administration at Washington, be unmindful of that fact? Not at all. It was our duty to be watchful with respect to it under any circumstances, but particularly so in view of our obligations to preserve that transit free from interruption.

Ever since 1846, when the treaty between this Government and New Granada, as that country was then called, was entered into, we have been under that obligation. Time and again we have landed our marines to preserve order and to protect that transit from interruption and embarrassment. Repeatedly we have done that at the request of Colombia; we have done it in a number of

instances on our own motion. The President of the United States, seeing the storm coming, seeing the action that was threatened, remembering his obligation to preserve peace and order and protect that transit from interruption, but did his duty in taking all preliminary necessary steps to preserve order when such a contingency should arise.

Mr. President, as is suggested to me, suppose he had not done it; suppose the rebellion had come; that secession had been accomplished; that war had ensued, and all the results that accompany war had followed, what would have been the criticism then of our friends on the other side? It would have been a criticism, not that the President had acted precipitately, not that he had acted without cause, but that he had not acted at all; that he had lost the canal after the United States had expressed her preference for it, and after the people of the whole country, without regard to party and without regard to section, had demanded it.

But, Mr. President, it was in view of just such a contingency, not knowing what might happen, but to be prepared for the worst and to discharge our duty in any event, that the President took the steps indicated by the telegrams read by the Senator from Massachusetts, from which he derives such criticising conclusions.

We are given the date when the secession occurred; we are given the date when the recognition was accorded, and we are asked to believe, if we agree with the Senator from Massachusetts, that there was inordinate haste, indecent haste, in granting that recognition.

Mr. HOAR. Mr. President, will the Senator allow me to say that I distinctly stated that I had no criticism to make on that subject, and that the time in which such a thing should be done—a little matter like that—could not be at all affected by the time we should have taken in our civil war. It was a field-mouse transaction, so far as that was concerned. I not only disclaimed what the Senator imputes to me, but I gave what I thought the strongest argument and the most apt illustration I could think of to show that so far as that was concerned there was no criticism whatever. If the Senator will read my speech in the RECORD he will find it to be so.

Mr. FORAKER. Mr. President, I am glad the Senator from Massachusetts has reconsidered, and that he has concluded to interrupt me.

Mr. HOAR. I have not reconsidered.

Mr. FORAKER. Well, the RECORD will show as to that also. Mr. President, it is true the Senator from Massachusetts said it did not matter whether it was five minutes, or five days, or five months, or some other specified time that intervened between secession and the establishment of an independent government and its recognition; but I understood the Senator—and if I misunderstood him I withdraw the statement I made a moment ago—to be arguing in that connection that there was not any necessity for haste, because it did not matter whether the recognition came five minutes afterwards, or five days afterwards, or five months afterwards, it was just as effective when it did come.

Mr. HOAR. Mr. President—

Mr. FORAKER. I object to being interrupted any more.

Mr. HOAR. I think the Senator ought not to misstate my position.

Mr. FORAKER. Have I misstated again?

Mr. HOAR. I stated as distinctly and as clearly as I could put it into words the exact contrary of what the Senator has said. I said that, in my judgment, there was no criticism to be made in the matter of haste.

Mr. FORAKER. Did I not withdraw that? What is the use of arguing it again?

Mr. HOAR. The Senator said he would withdraw it, and then he added that he was glad I reconsidered my statement.

Mr. FORAKER. That was the Senator's statement, not to interrupt me again. [Laughter.]

Mr. HOAR. I did not make any such statement, Mr. President. I made no statement that I would not interrupt the Senator again.

Mr. FORAKER. Then I hope the Senator will make it now and adhere to it. [Laughter.] I am not going to misrepresent the Senator intentionally or knowingly.

Mr. HOAR. I am sure of that.

Mr. FORAKER. The Senator from Massachusetts may be certain of that.

Mr. HOAR. And therefore the Senator from Ohio will like to have me interrupt him when he misstates my position. [Laughter.]

Mr. FORAKER. Mr. President, that is the way the good nature of the Senator from Massachusetts always enables him to get the better of everybody. Yes; he may interrupt me whenever he likes. But I wish the Senator would remember when he has interrupted me to tell me before he quits where I was when he interrupted me. [Laughter.]

Mr. HOAR. I will tell the Senator where he was. He was making misstatements of my position when I interrupted him. [Laughter.]

Mr. FORAKER. That does not help me any. According to my interpretation there are so many misstatements that I am hopelessly at a loss when the Senator tells me I was discussing one of them. There are several of them I wanted to discuss. I am reminded now by the Senator from Illinois [Mr. HOPKINS] that I was speaking on the question whether or not there was any undue haste in the recognition of the Republic of Panama.

What are the facts? What are the precedents, first? In 1871, when the Republic of France was established, we recognized it immediately. We did not wait a day, or two days, nor three days, nor five days, or any other length of time. It was established one day. The date of our cablegram instructing Minister Washburne to recognize the Republic of France was dated the next day. That apparent delay of a day was only because of the difference in time. It was sent in the evening. It was already the next day when it got here and was answered. France had no constitution, but it was not a humming bird or any other thing of a diminutive character, but a great, mighty people, forty millions or more, who had set up a Republic dedicated to freedom and to human liberty, and this great Republic at once responded with recognition.

Mr. ALDRICH. We did not even ask France, as I remember, whether the Government which had been overthrown consented.

Mr. FORAKER. No.

Now, in 1873 they established a republic in Spain. There was



no delay. Immediately our minister there, General Sickles, was advised by our Government to recognize, and he did recognize, the Republic of Spain. Later, when the Emperor of Brazil was deposed, the Republic that followed him was instantly recognized, and other examples might be cited.

Mr. President, there was no reason in the case of France or Spain or Brazil for precipitate or hasty action; we had no special duties there; but in the case of the Republic of Panama it was different. What are the conditions, according to international law, that are sufficient to justify us in instantly recognizing a new government, as we did in the case of France, Spain, and Brazil?

The only condition necessary—and it does not make any difference, in the language of the Senator from Massachusetts, whether it be brought about in five minutes or five days or five months—is that the new government shall be the sole authority throughout the region over which it undertakes to govern, and that there is no contention and no disputed authority. It is not necessary to go that far. But when those conditions exist to that extent, then according to all international canons of law a recognition is in order at the option of the recognizing government. In the case of France I say there was no special necessity for haste, but these conditions existed, as we understood, and we recognized it.

It was the same as to Spain, and the same as to Brazil in a general way. But in the case of Panama it was not only true that the Republic of Panama was the only authority there of a governmental nature, that that authority was supreme throughout her borders, but it was also true that there was not even a policeman representing Colombia within the Department of Panama. They had a little army there when the trouble commenced—400 men, with some generals and colonels—and they were all quietly picked up, without the shedding of one drop of blood, and put on a transport and sent back to their own home. That completed the revolution.

But, Mr. President, there was a necessity in the case of Panama which required prompt action on our part, as there was no necessity in the other cases to which I have referred. These conditions existing, we would have been without excuse if we had halted in recognition. The necessities to which I have referred are these: Under the treaty of 1846 we had a duty at that time incumbent upon us, as it has been ever since the ratification of that treaty down to the present moment, to preserve that transit free from interruption.

War being threatened, a condition of things being threatened that promised an interruption, it was the duty of this Government to be prepared to prevent it; and instead of criticising President Roosevelt for the action he took, he ought to receive and he will receive from the American people their unqualified approbation for that which he did in this respect, because that which he did was but to redeem the promises and obligations of our Government, just as other Administrations have done the same thing over and over again.

We do not have to wait until there is actual war. We do not have to wait until there is a hostile force landed and engagements actually commence and blood is being actually shed. It is much better, Mr. President, foreseeing the situation of which all have



common knowledge, to take steps to prevent these conditions that would have followed but for our intervention.

Mr. President, other nations have recognized the Republic of Panama. I do not remember how long they delayed. It was quite natural, perhaps, as the Senator from Massachusetts suggested, as I understood him, that France should promptly recognize, but I do not know of any reason why Germany should recognize or Russia should recognize or China should recognize the Republic of Panama, except only the reason that according to international law, as I have stated it, the conditions existed that warranted and justified recognition, and they recognized at their option.

Mr. President, no Senator on this side, I am sure, has the slightest objection to all possible information being given with respect to this whole transaction: no Senator on this side has the slightest objection to all the light being had on this transaction that can be shed on it, but there is a time and there is a place for Senators to discuss propositions of this character. Here in this open session is not the time nor the place. I have undertaken to say enough only in answer to the Senator from Massachusetts to show that the President in this matter did not act hastily; that he did not act without precedent or without the warrant and authority of international law, and that he did not act contrary to, but strictly in conformity with, his official obligation, charged as he is, as the head of this nation, with the faithful execution of all our treaty obligations.

I have no hesitancy in saying, Mr. President, that I have the profound conviction that when this matter is thoroughly understood even our Democratic friends will hesitate to criticise him. Certainly they will hesitate, at any rate, when they make their nonpartisan speeches, of which we have heard so much, and then give their nonpartisan votes.

But, Mr. President, as I have already intimated, I do not want to discuss the question at any greater length than I have. I do not think it proper to do so. I have undertaken to say just enough to express the view I entertain with respect to it and the view which I believe my brother Senators entertain and the view which I believe the American people have and will approve with respect to it, and with that, for the present, I am content.







REPUBLICAN POLICIES.

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SPEECH

OF

HON. JOSEPH B. FORAKER,

OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

Thursday, February 4, 1904.

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WASHINGTON.

1904.





SPEECH  
OF  
HON. JOSEPH B. FORAKER.

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*Thursday, February 4, 1904.*

The Senate having under consideration the bill (H. R. 10954) making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1904, and for prior years, and for other purposes—

Mr. FORAKER said :

Mr. PRESIDENT: I had not intended to take any part in this discussion. I have felt that I would be content to simply vote for the amendment that has been reported by the Committee on Appropriations. But the discussion has taken on such features that I feel justified in detaining the Senate a few minutes until I make some observations in response to the speech that has just been made.

I want, however, before commencing that response, to say with respect to this exposition that it is a great American undertaking—just as the acquisition of the Louisiana purchase was a great American acquisition—and I regard this appropriation or this loan, whichever you may see fit to call it, as also giving rise to only an American question. I have so dealt with it, so regarded it, and have been intending so to vote. And I shall vote upon it with that kind of spirit. The good name of our Government and people is involved, and we can not afford to allow the undertaking to fail. To do so would bring reproach upon us all.

It seems to me, therefore, such being the character of this question, that it was quite out of place, to say the least of it, that there should have been injected into this debate a political question: that there should have been any criticism upon party policies, or anything said that would give rise to the character of discussion to which we have just been listening.

I was quite pleased, however, when the Senator from Maryland [Mr. GORMAN] had seen fit to introduce politics in this debate, to hear the kind of answer that was made to him a few moments ago by the Senator from Massachusetts [Mr. LODGE]. That answer made by the Senator from Massachusetts was complete as to all that had been said by the Senator from Maryland up to the time when the Senator from Massachusetts spoke. But the Senator from Maryland, in his reply to the Senator from Massachusetts, has spoken of another matter as to which I desire more particularly to speak than as to anything else.

He has talked about the condition of the country at the close of the Harrison Administration. He has told us that when Mr. Cleveland came into power, as a result of the elections of 1892, he found a bankrupt Treasury; that he found the Treasury in such a condition that it was necessary to issue bonds in order to meet a deficit, to tide over, to preserve the national credit; and he said it is a commonly known fact that steps had already been taken by

the Secretary of the Treasury and other governmental officials looking to the issuing of bonds, and that that had been made necessary because of the failure of the policies which had been pursued by the Republican party during the Administration of Mr. Harrison.

Mr. President, I am surprised, in view of what may now be called the historical facts, which must be admitted by all, to hear that kind of a statement made by the Senator from Maryland.

During the Administration of President Harrison this country, as everybody knows, enjoyed a prosperity until that time absolutely unprecedented in the history of the country; a prosperity greater than any other country had ever before that time enjoyed in the history of the world. During all that period the revenues were more than equal to the expenditures. We had prosperity in our foreign commerce. We had balances of trade in our favor. We had a credit exceptionally high, never prior to that time surpassed in the history of this country.

And, Mr. President, until after the election in November, 1892, those revenues continued to be in excess of the expenditures. There was no trouble about the gold reserve or on any other account.

But what happened following the election in November, 1892, and what was the cause of it? In order that we may rightly understand that, we must recall the character of platform declaration upon which Mr. Cleveland came into power.

It will be remembered that in the platform of 1892 the Democratic party denounced the McKinley tariff law as a culminating atrocity—I think that is the phrase they used—and they demanded its immediate repeal and gave a pledge to the country that if they should succeed at the elections and have the power intrusted to them necessary thereunto, they would repeal that law and they would substitute a tariff-for-revenue-only law, which is only another name for free trade. They succeeded. The morning after the election it was announced to this country not only that Mr. Cleveland had been a second time elected President of the United States, but also that Congress would be Democratic in both Houses—a Democratic Senate and a Democratic House of Representatives.

So, Mr. President, the announcement of that election was an announcement that we were not only to have a Democratic President and a Democratic Congress, but a Democratic President and a Democratic Congress pledged to repeal the McKinley law, to change the industrial policies of the country, and substitute instead of the policy of protection the policy of free trade, or the near approach to it of a tariff for revenue only. What was the consequence? Every prudent business man in this country knew that if the industrial policies were to be thus radically changed, it would be well for him to consider what the consequences would be upon him in his business.

We commonly speak of the panic that broke upon the country in 1893 as the panic of 1893. But, Mr. President, that panic which broke upon us, apparently very suddenly, in 1893 was a panic that commenced the morning after the election in 1892. That panic commenced when the thoughtful, prudent, and conservative business men of this country read the result of that election and commenced to study what would be its consequences.

If a man was a banker he knew that a radical change in our industrial policy made it necessary that he should consider what would be the effect upon him, and, not knowing the measure of the effect, or perhaps whether it would be good or bad, determined, as he went to his place of business that morning, that he would look over the list of bills receivable and see which of his debtors he should call upon to pay; and every manufacturer, as he went to his place of business, considered whether or not he could not shorten the pay roll, and men who had given orders for materials to be manufactured commenced to consider whether they could not cancel the same or modify them.

So it went on until shortly it became known to every man in business that all his neighbors were feeling just as he was feeling, and when this feeling became general then came the breaking upon the country of that panic which brought us so much disaster and continued throughout the period of that Administration.

But, Mr. President, that is not all. When the men who were importing goods into this country and paying the tariff duties that were being collected under the McKinley law saw that the Democratic party had thus come into power and that it was pledged to a free-trade policy, that the first duty of the party under such circumstances would be to redeem that pledge to repeal the McKinley law and substitute lower duties, every such importer at once said, "I will see what I can cancel that I have been ordering."

The result was, Mr. President, that orders for goods to be imported were canceled generally throughout the country, and men who had not given orders which they had been intending to give withheld them as a consequence of that election; and so it was that not until after that election, and in consequence of that election, and what the people of the country had a right to expect as a result of it, if the Democratic party was to keep its pledge, the revenues of this country commenced to decrease. They commenced to fail because, for the reasons I have given, importations began to fall off.

That election was in November. December and January and February followed. Through the months of December and January this condition of things had so continued and was so constantly growing worse, men withholding orders for importations until they could have the benefit of Democratic free-trade tariffs, or tariffs for revenue only, which they had a right to expect to be lower, that the revenues were affected. But to what extent?

I have in my hand a copy of a letter which I want to put in the RECORD as a complete statement of that whole matter and as an answer to all that the Senator from Maryland has said. The late Hon. Charles Foster was then the Secretary of the Treasury. He died only a few weeks ago. During the campaign of last year, while he was still living, a statement somewhat similar to that which the Senator from Maryland has made with respect to the condition of the Treasury at the close of Mr. Harrison's Administration was made in Ohio by the Hon. Judson Harmon, late Attorney-General of Mr. Cleveland.

About the same time there appeared in the newspapers an interview with Mr. GAINES, a Member of the House of Representatives from Tennessee, in which he made a similar statement. See-



ing these statements in the newspapers, I addressed a letter to Governor Foster, calling his intention to them, and asking him to write me what the facts were. In response to my letter I received the communication which I ask the Secretary to read.

The PRESIDENT pro tempore. The Secretary will read as requested.

The Secretary read as follows:

FOSTORIA, OHIO, October 28, 1903.

HON. J. B. FORAKER, *Cincinnati, Ohio.*

MY DEAR SENATOR: Your favor of the 27th this moment received. Harmon's statement is quite vague. He says: "In 1893, when the Democratic party came into power, the Republican Administration had bankrupted the Government. When Cleveland entered the White House there were bonds already signed by the Republican Administration. They had barely managed to tide over until we got into office, and then we had to take the stigma that came as the result of their unwise administration."

The charge that the Government was bankrupt when Cleveland came into power is ridiculous. The revenues up to that time, and until the end of that fiscal year, exceeded the expenditures. The usual charge is the one made by Mr. GAINES in the Nashville American, copied in the Enquirer of the 21st, that "Secretary Foster prepared plates for bonds to tide over a deficit."

The facts are that as soon as it was known that Cleveland was elected in November, 1892, it became apparent that there was great danger on account of importations being held back for lower duties that the gold reserve would fall below \$100,000,000 required, not by law, but by implication of law. After consulting fully with Senator Sherman, I made up my mind that it was my duty to maintain the gold reserve even if I had to do it by the sale of bonds.

The only bonds authorized were those of the resumption act of 1875, all bearing high rates of interest and running a long time. I suppose (to assist me) Senator Sherman introduced an amendment to an appropriation bill in the Senate authorizing an issue of a 3 per cent short-time bond. Mr. Carlisle, who was then known to be the incoming Secretary, was consulted by the Senator and approved Mr. Sherman's amendment. It passed the Senate by an almost unanimous vote. This was about the 22d of February. Upon its passage, fearing that I might be compelled to use bonds for the purchase of gold, I directed the superintendent of the proper office to prepare plates for this bond; a better bond for my purposes than those already authorized.

I did this upon the belief at the time that an act approved by the incoming Secretary, that passed the Senate, receiving a large share of the Democratic votes of that body, would also pass the House. But in this I was mistaken. The House refused to pass it, and the plates were not prepared, and there were no bonds already signed, as stated by Mr. Harmon. But my letter directing the preparation is used in evidence that the plates were prepared and that a deficit existed.

To go a little further in this matter, I had fixed upon \$50,000,000 as the amount of gold I would buy, and I had an understanding with the bankers in New York to this effect, but they stipulated they would take the bonds in installments of \$10,000,000 a week. If this was done, it would devolve upon Secretary Carlisle to execute a part of my contract. The bankers desired Secretary Carlisle's concurrence in the arrangement.

In this emergency I called upon Senator GORMAN, stating the facts to him and saying that many of my Republican friends thought I had better not do anything in the way of the maintenance of the gold reserve, yet I deemed it my duty as Secretary of the Treasury to continue to do until the last hour of my term what I would do if I were to be continued in office. In this I was sustained by Senator Sherman.

Mr. GORMAN heartily approved and sent a messenger for Mr. Carlisle. Mr. Carlisle soon made his appearance and seemed greatly pleased at what I proposed, and next day went to see Mr. Cleveland. Upon his return I was informed that he would execute the part of the plan that would devolve upon him and that Mr. Cleveland also approved.

To sum up, the Treasury was not bankrupt at any time, and there was no deficit at any time, no plates for bonds, and no bonds were signed.

No bonds were sold. I managed to maintain the gold reserve, turning over to my successor about \$103,000,000.

I believe that if the Harrison Administration had been continued the revenues and the gold reserve would have increased, and the condition then prevailing would have improved.

The panic and deplorable condition following Cleveland's election was wholly due to two causes: First, the known purpose of the Democratic party to adopt a revenue tariff, which at once affected the imports and paralyzed all industries and business, and, secondly, the known incapacity of the Democratic party then coming into power to agree upon efficient legislation, afterwards so painfully demonstrated.

Very truly, etc.,

CHARLES FOSTER.



Mr. FORAKER. Mr. President, I do not intend to undertake to elaborate what is set forth in that letter. It is a clear, straightforward statement, a statement of fact, a statement that is supported by history, a statement throughout that no man, in my opinion, can successfully challenge.

Mr. GORMAN. Will the Senator permit me to interrupt him for a moment?

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Maryland?

Mr. FORAKER. Yes.

Mr. GORMAN. Mr. President, apart from the statement just read as to the deficit and the falling off in the revenues being caused by the election of Mr. Cleveland and the threatened revision of the tariff laws, the letter, so far as it relates to me—and I think I have a knowledge of the whole of it—is accurate: that is to say, Secretary Foster—I think I have made this statement once before to the Senate—by direction of President Harrison himself, both of them being great and patriotic men, sought me because of my then relation to party matters on this side and handed to me a balance sheet of the Treasury conditions without, of course, going into what may have been any political considerations, and stated that he desired provision for the issuing of bonds; that he desired and President Harrison desired that the incoming Administration should have in advance of the inauguration this information. He stated, just as he states in this letter, what his course would have been about issuing a low-rate bond—a 3 per cent bond. That is all true.

That proposition was carried through the Senate after conference on both sides of the Chamber. It was defeated in the other House because some gentlemen, higher in the councils of the party than anyone on this floor determined that it was unwise and probably unnecessary to take such action. But afterwards the prediction of Secretary Foster was actually verified. During the long discussion, not of the tariff, but of the question of the coinage of silver, occupying six or eight months, the revenues decreased. Then other bonds were issued, no provision having been made for the low-interest bonds.

I acquit the Secretary of the Treasury and President Harrison of any motive of dealing with the question in a partisan standpoint or of any other motive than subserving the interests of the Government. As I stated a moment since, the revenues at that time were not sufficient for the needs of the Government. I may, in the heat of debate, have used an expression that the Government was bankrupt, but that would have been putting it too strongly. What I meant to say was, that the balance in the Treasury was not sufficient and was not considered sufficient, under the then conditions, to conduct the Government successfully.

Mr. FORAKER. Mr. President, I am glad that the Senator from Maryland states that this letter, in so far as it comes within his knowledge, is a correct and truthful statement. I know it to be such because of the character of Governor Foster, and because also of my personal knowledge, as every man has personal knowledge of public affairs with respect to these matters.

I am also pleased, Mr. President, to know that the Senator now modifies the statement he made, to which I was taking exception, namely, that the Government was bankrupt under the Harrison Administration.

Mr. GORMAN. I did not intend to use such a strong expression; and, if I did, I modify it.

Mr. FORAKER. It was a very strong expression, and I thought the Senator, when he reflected, would perhaps want to modify it. One purpose I had in calling his attention to it was to give him an opportunity to at least show that it ought to be modified.

But, Mr. President, it is true, as Secretary Foster says in that letter, that during the whole Harrison Administration and until after the Presidential election the revenues were more than sufficient to meet all the expenditures of the Government, and there was no decrease or falling off of a noticeable character, more than that which would happen on account of ordinary fluctuations, until after that election, until after the country knew the Democratic party was coming into power, pledged to inaugurate a new and a different industrial policy.

What Governor Foster says in that letter is also true to the knowledge of the Senator from Maryland, that the only reason why he was making preparation to issue those bonds, if the incoming Administration saw fit to approve of that proposition, was not his fear that the Government would not be able to meet its obligations, but that the gold reserve of \$100,000,000—not required by law, but which was an established requirement because of usage—might become impaired.

Governor Foster says also in this letter that that apprehension was not well founded. Notwithstanding his fear, notwithstanding the decrease in revenues occurring at the time for the reasons mentioned by him, yet when he went out of office the gold reserve had not been impaired, for instead of \$100,000,000 he had \$103,000,000 in the gold reserve and an abundance of money to meet all the obligations of the Government.

Mr. President, I am not going to stand here and waste time arguing that the condition referred to was due to any failure of Republican policies under the Harrison Administration. The policies of that Administration were precisely the policies that have been pursued since, so far as economic policies and economic conditions are concerned. We had precisely the same prosperity then that we have had since, except only since we have had it in a greater degree.

Mr. TILLMAN. Mr. President—

The PRESIDENT *pro tempore*. Does the Senator from Ohio yield to the Senator from South Carolina?

Mr. FORAKER. Yes.

Mr. TILLMAN. Does the Senator include in that the period during which we had a so-called Democratic Administration in power?

Mr. FORAKER. No.

Mr. TILLMAN. Does he include the four years when we got all the odium of those policies and all the odium of issuing bonds and all that kind of thing?

Mr. FORAKER. I was talking about the four years preceding the period of odium, as the Senator from South Carolina sees fit to call it.

Mr. TILLMAN. I would have preferred if the Senator had said there had been no change in policies, because there was absolutely none under Mr. Cleveland. The policy of Mr. Harrison was carried out by his successor, and any results of that policy ought to be claimed by you rather than have you put them upon us.

Mr. FORAKER. I will not stop to answer that, except only to recite what the facts are in a very brief way with respect to the conditions under the Harrison Administration. During that Administration we enjoyed the highest credit that this Government had ever enjoyed until that time; during that period our foreign trade grew as it had never grown before; during that period we had no occasion whatever to issue any bonds to meet the obligations of the Government or on any other account.

Then followed the Cleveland Administration. It came in, as I said, pledged to a different policy. The Senator from South Carolina [Mr. TILLMAN] wants us to believe that there was no change. There was not as much change, perhaps, made by what is known as the Wilson-Gorman tariff law as was expected by many from the McKinley law; but it was the difference, Mr. President, between having a party in power that was pledged to a policy of protection and one that had come into power pledged to the overthrow and destruction of that policy; and during the months preceding the breaking out of that panic the whole country expected a redemption of that pledge.

That was bad enough; but when the Congress assembled and undertook to legislate to carry out that pledge, something worse, apparently, for the country occurred, for then it was developed that no two Democrats in the United States understood alike what was meant by a tariff-for-revenue-only law. They passed a tariff law in the House of Representatives which was supposed to be an expression of Democratic purpose and a redemption of the Democratic pledge. They sent it here to the Senate, and I have seen it stated—I do not know whether the figures are exactly correct or not—that 1,397 mistakes in the interpretation of that pledge by the House had found their way into the bill that they passed, and called for that many amendments here in the Senate.

From one month to another the debate went on, with the panic all the while growing worse and worse and the revenues decreasing, until it became necessary for that Administration, in a time of profound peace, to issue bonds to meet the ordinary expenses of the Government; and finally the credit of this Government became so poor—or so impaired, let me say, rather—under that Administration that when the last issue of \$62,000,000, I believe it was, of 5 per cent gold-bearing bonds was put upon the market it was found necessary, in order that a sale might be secured for those bonds, to organize a syndicate of bankers in Wall street through whom those bonds should be disposed of to the country.

I am not going to pursue that further. It is not necessary. But, Mr. President, what happened next? When the McKinley Administration commenced, the trade conditions were what have been indicated by the Senator from Massachusetts [Mr. LODGE].

During two of the years of the Cleveland Administration the balances of trade were against us. During only two of the four years were those balances in our favor, and then only small balances they were. But the very moment that the Republican party was successful at the elections of 1896 business conditions began to improve, slowly, hesitatingly for some months, until the Administration had come into power, and until it could be made plain to the country that less than a majority of this body would be able to so legislate with respect to the tariff as to repeal the Wilson-Gorman law and substitute the Dingley law, as it is now known, in its stead.



But as soon as that was an accomplished fact, the wheels began to turn; men were called from idleness to employment; business conditions revived, and prosperity set in and has continued without interruption until now we have the greatest prosperity in the history of this or any other country on the face of the earth.

The figures read by the Senator from Massachusetts are simply stupendous, almost incomprehensible. During the years that have passed since the McKinley Administration commenced until now our foreign commerce has so grown, and grown in our favor, that the annual balance of trade will average more than \$500,000,000, every dollar of which the nations with which we trade have been compelled to pay to us, and pay to us in gold worth 100 cents all around the world. There have been no 50-cent Bryan dollars in those transactions. As a result of it, Mr. President, we have to-day in the Treasury of this country more gold belonging to the United States than was ever held by any government in the history of the world.

Not only has our foreign trade grown in that manner and to that extent and with that success, but the prosperity which it indicates is general; it is universal; it is distributed throughout the whole country; it is common to all the sections, and to no section more than to the Southern States.

A few days ago there was made in another place where men legislate a very brilliant speech, in the course of which the speaker quoted from newspapers, the leading newspapers from almost every State throughout the whole South, in order to show what the conditions were, according to those papers—almost every one of them a Democratic paper—on the 1st day of January last.

It is a most remarkable array of facts in proof of the statement I make that this prosperity does not alone belong to the Government, to be measured in balances of trade, in the high credit we enjoy, in those things that pertain to our ability to make expenditures, to our National Treasury, but that this prosperity belongs to the people throughout all the sections of this land. I want to briefly call attention to this. It can not be given too much publicity. It was a happy thought that induced this speaker to cite these newspapers. He commences with the State of Missouri. He cites first the Kansas City Journal of January 1, in which it is said:

According to statements made by officials of the railroads running into Kansas City, every company has reason to rejoice over the business for the year just closed. One general agent said that the earnings of his road had increased 33½ per cent over 1902.

The Kansas City Star says:

Bank clearings are not always a definite indication of business movements, but they may be taken as a reliable basis of comparison in noting progress in any one city. The clearings in Kansas City for the past year were one thousand and seventy-five millions, or an increase of eighty-six millions (9 per cent) over the record of 1902. Building records and real estate transfers show similar increase. Both the wholesale and retail merchants report gains.

I am not going to read all of these, but I want to read a few of them just to show how universal they are and how all alike tell the story of prosperity. The St. Joseph Gazette says:

The country upon which St. Joseph depends for its maintenance is prosperous to a most gratifying degree. Crops have been fairly abundant; prices for the products of the farm and range far in excess of the average for many years.

Now I come down to Virginia, skipping quite a number of citations from other papers in Missouri. The Despatch, of Norfolk, says:

The cities of tide-water Virginia have experienced a solid and increasing growth during the past ten years. Norfolk is in many ways better off to-day than a year ago. Churches, schools, charitable organizations, and business organizations have flourished and grown and improved within the year. Local bank deposits have shown a steady increase during the year, and local bank clearings also indicate an increase in the volume of business done in the city, and the record of the year past is the largest in the history of the city.

Mr. PATTERSON. Mr. President, may I ask the Senator a question?

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Colorado?

Mr. FORAKER. Certainly.

Mr. PATTERSON. If prosperity is as great as it has been, if it has not diminished and is not diminishing, how does the Senator from Ohio account for the material cut in the wages of twenty-five or thirty thousand of the workmen and workwomen engaged in the New England textile fabric mills, a reported cut in wages in all the steel industries, and that there is now assembled at Indianapolis a national convention of bituminous coal miners threatening a national strike because they have been notified that after a time soon to come the wages they are receiving will be materially lessened?

Mr. FORAKER. Mr. President, there is no trouble in answering the Senator. I am not going to answer him in detail as to all the cases he puts, because it is sufficient to answer him as to one, and either that or some similar answer will be found as to each of the others. He puts the case of cotton manufacturers. It is the price of cotton, Mr. President, which has gone so high—whether on account of legitimate demand or whether on account of manipulation of stock brokers and dealers it does not matter—has gone so high as to cripple that industry, to stop a number of factories, and to turn, in consequence, a number of men into idleness.

For other causes, having nothing to do with the general policies of the country, but originating in and having their effect in spite of those policies, the steel industry has been temporarily affected, and the mining of coal has been temporarily affected, perhaps. I am not able to answer as to detailed facts all the suggestions made by the Senator, but we know that it is no unusual thing to see the representatives of labor and the representatives of capital meeting in national convention for the purpose of considering questions of wages and other questions of a similar character.

We do know, however, Mr. President, this to be a fact, that when the Republican party is in power and the people of this country are satisfied with the industrial legislation, there is never any strike, except for differences as to wages or hours or other terms. Labor strikes when it knows if it quits work to-day it can go back and find work to-morrow; capital strikes and goes out of business when you institute policies in which the people have no confidence. That is the difference between strikes under Democratic and strikes under Republican policies.

You are liable to have strikes under any Administration, although from different causes. How was it under Cleveland? No-



body struck then because he was getting less wages than he wanted. The trouble was to get any wages at all. The only striking anybody did was to strike out for a job, the first one he could hear tell of, and pursue it and get it, if he could, anywhere and at "any old price," on any kind of terms.

Now, let me pursue my remarks. I am not going to be tedious about this. I only want to show, Mr. President, that this is not a prosperity merely of the Government, but it is a prosperity for the whole people and for all the sections of this country. I have read from newspapers in Missouri, and I read from one in Virginia.

Mr. TILLMAN rose.

Mr. FORAKER. I will get to South Carolina in a moment.

Mr. TILLMAN. I just want to ask the Senator from what he is reading? He started out to tell us he was reading from a speech; but he did not tell us where it was delivered, or when, or by whom.

Mr. FORAKER. I thought the Senator would understand that the rules of the Senate prohibit my speaking of what occurs in the other House. Therefore, I said this speech was made elsewhere.

Mr. TILLMAN. That is rather thin, Mr. President.

Mr. FORAKER. Well, I can say, I presume, that it was made in the House of Representatives, and it was made by Mr. BOUTELL of Illinois, a Member of that body.

Mr. TILLMAN. I am glad I got the information.

Mr. FORAKER. And it was made on the 26th of January. I invite the Senator's attention to it. He will find it profitable, I think, to give it careful study.

Mr. President, to go on with this, I could read to the same effect from the Petersburg Index-Appeal, to the same effect from the Jacksonville Times-Union, and from the Pensacola News, as to the condition of things in Florida; and I could read to the same effect from the Leader, a paper published in Lexington, Ky., as to the conditions existing in that State, and from the Louisville papers to the same effect. All these papers let me remind the Senate, are of date January 1, showing the condition only a month ago, as published in these Democratic papers in their respective localities. The Atlanta Constitution, January 1, says:

Annual reports of all city officials show a bright chapter in the history of Atlanta, the year 1903 having been one of the most prosperous in its history.

The clearings of 1902 were increased by \$13,791,580.34. The year's record is a remarkable one, and is considered as a strong indication of the substantiability and growth of business in Atlanta.

The Augusta Chronicle and a number of other papers in that State are quoted.

Then he goes to North Carolina and from the Rural News and Observer he quotes this:

The year that closed last night has been a good one for North Carolina and the American Republic. Crops have been large and prices good. It has been a specially good year for farmers.

I quote now from the Wilmington Morning Star:

The steady increase in the commerce of Wilmington is extremely gratifying to the people of the city, and the growing importance of the chief seaport of North Carolina will alike be a source of gratification to the people of the entire State.

Now I come to South Carolina, that blessed old State, so ably represented on this floor always, and particularly now. The Charleston News and Courier is quoted from, as follows:

The banks of Columbia show by their reports that they have had a very successful year, and it follows that the people of the city have cause to be, in

a large measure, satisfied with the last year's business. The total deposits in the five banks amount to \$3,503,907.50, a very large sum for a city of the population of Columbia. Compared with former years, the deposits increased very much, and the bankers seem to be full of confidence of still greater proportionate increase during the present year.

Now let me read from another paper, the *Greenville News*:

The year 1903 has been one of unprecedented growth and general improvement. Something like \$2,000,000 has been expended during the year in the erection of public and private buildings, manufacturing plants, and various other commercial enterprises. The most successful year in the history of Greenville has passed. Nineteen hundred and three has left the city greater, richer, and more prosperous than when it came.

Then I could read to the same effect from the papers of Memphis and Nashville as to the conditions of prosperity obtaining in the State of Tennessee, and so on throughout the South. I might go on reading to a very much greater extent than I have, but I have read sufficiently to support what I want to state, that this prosperity about which we talk is a prosperity not for any particular section, not for any particular class, but a prosperity for our Government, a prosperity for our country and our whole country, a prosperity for every section of our country, a prosperity for every class in our country, for I have read sufficiently to show that this prosperity has been felt and enjoyed not alone by the merchant and the banker and the manufacturer, but also by the farmer and all those in the humbler vocations and walks of life.

With this kind of prosperity throughout the country, with every newspaper in the South proclaiming it, and everybody throughout the North enjoying it, the whole country in the enjoyment of it, does not the Senator from Maryland think he should modify the statement he made yesterday, when in effect he said, as on reflection he modified his statement of the bankruptcy of the country at the close of Harrison's Administration, the policies of this country as pursued by the Republican party have resulted in failure?

Mr. President, instead of the policies pursued by the Republican party since the McKinley Administration until this time resulting in failure, they have resulted in a triumphant success the like of which has never been known and perhaps never will be again. We can not conceive of the possibility of a greater prosperity than that which the people of this country are enjoying.

Mr. President, I am not going to stand here now to defend the Army or to defend the Navy or to defend the expenditures we are making for the Army and the Navy. That is not necessary. The Army and the Navy of this country have ever, from the beginning of our history, been able, by their heroic achievements and their splendid endeavors, to defend themselves; but I will stop to call the attention of the Senator from Maryland to the fact that the law in respect to the Army authorizes an Army that shall have a maximum strength of not more than 100,000 and a minimum strength of 65,000.

Hardly had the law been passed giving the President authority to increase the Army to the maximum until the President of the United States, instead of taking steps to increase it to the maximum, as was predicted here in the Senate and elsewhere, took steps to reduce it to the minimum of 65,000 officers and men, and it has never since been above the minimum; and to-day, by the latest official report from the War Department, I see that the total strength of the Army, officers and men, is 59,181, or almost 6,000 below the minimum prescribed by law, and 40,000 below what the

Senator from Maryland stated, as I understood him, and as is suggested to me by the Senator from Massachusetts [Mr. LODGE].

Now, as to the expense of our Army, we are told that it is greater than it should be for an army of 60,000 men. We were told that, I believe, by way of explanation as to why he said it was an army of 100,000 men, if I correctly understood the Senator, and we are told of the relative expense of the armies of other countries. Mr. President, it does cost more to maintain the American Army than it does to maintain any other army in the world. England pays to her soldiers the highest wages of any country other than the United States, and the United States pays twice as much to her men and officers as they do in England, speaking in round numbers.

In Germany, France, Italy, Russia, and other countries they pay far below what England pays. So if it be that our expenses are larger for an army of 60,000 men than the Senator from Maryland had calculated they should be, it is because we do what we ought to do. We remember that they are American citizens, who are for the time being serving the American Government, and we expect them when they are through with that service to come back and be a part of the sovereign governing body politic of this country and to be fit and worthy citizens to live in this country and fit and worthy to live here because they love the country, and are ready to respond to its call and stand up in defense of its flag whenever there may be necessity for it.

I do not believe, Mr. President, that the American people have any anxiety about the American Army. I believe that the American people justify the maintenance of the Army we have. We know they do. We had this question paraded and exploited and debated and discussed before the American people in the last campaign, when anti-imperialism and expansion constituted the paramount issue, so called. What was the result? The Democratic party in that campaign marched to an even greater and more fatal Waterloo for them than they found at the end of the campaign under Mr. Bryan in 1896.

No, Mr. President; if the Army is to be arraigned, either on the ground that it is too large, when we are maintaining it only at its minimum, or on the ground that it is overpaid, when we are only paying American wages, the people will answer for the Army and I need not waste any time in doing so.

As to the Navy, from the days of the Revolution to this time the American Navy has been the pride of the American people. Whoever else may have failed the American people, the American Navy never has. It is an organization of which every man in this country can be justly proud. Wherever they have carried our flag they have shown bravery and heroism equal to every emergency and a wisdom and a diplomatic capacity and ability not surpassed by those in civil life trained in diplomacy.

I do not believe the American people want us to stop increasing our Navy until we have made it commensurate in strength with the greatness of this the greatest country in the world. I believe the American people have approved the American policy known as the Monroe doctrine, and that they will hold any Administration derelict in duty that fails to be ready at all times to maintain that doctrine and to assert American rights wherever American rights may be challenged.

So it is, Mr. President, that although we have before us a question that is simply American, a question about which there should be no party lines drawn, we have yet found it necessary—I am glad to know the necessity was not occasioned by the remarks of anyone on this side of the Chamber—to refer to political policies and political administrations and political disasters and political triumphs. Perhaps it is well enough that it is so, for the record is made up. The American people have passed judgment. Let them stop and consider, for they will be called upon to pass judgment again. We are ready for the debate and ready for the vote. We shall go forward without hesitation, expecting the same triumphant vindication next November that we had four years ago and on the previous occasions which I need not mention.







REPUBLIC OF PANAMA.

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ANSWER TO SENATOR HOAR.

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SPEECH

OF

HON. JOSEPH B. FORAKER,

OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

MONDAY, FEBRUARY 22, 1904.

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WASHINGTON.

1904.



# SPEECH OF HON. JOSEPH B. FORAKER.

*Monday, February 22, 1904.*

The Senate having under consideration the following resolution submitted by Mr. BACON:

*Resolved*, That the President be respectfully informed that the Senate favor and advise the negotiation, with a view to its ratification, of a treaty with the Republic of Colombia, to the end that there may be peacefully and satisfactorily determined and adjusted all differences between the United States and the Republic of Colombia, with the intent of removing any cause of irritation or conflict, and of restoring the cordial relations heretofore existing between the United States and Colombia, and also of securing the hearty cooperation of the Colombian people in the construction of the canal at Panama—

Mr. FORAKER said:

Mr. PRESIDENT: I have listened to the distinguished Senator from Massachusetts [Mr. HOAR] with that delight which a high order of intellectual effort always inspires; in this case with the added pleasure that I am in full accord with all he has said about the question under consideration, however it may be as to his criticisms upon myself for the speech I made in answer to him when he spoke in December last.

I account myself somewhat unfortunate, Mr. President, with respect to this controversy in so far as there is one between the Senator from Massachusetts and myself. I had been otherwise engaged when he made his former speech to which reference is made and came into the Senate Chamber only as he took the floor and commenced to speak. I was not aware he intended to make a speech. I was not aware he had introduced the resolutions to which he spoke. I knew nothing about that speech except only as I gathered it as he delivered it. I undertook to make an answer to it. It was necessarily impromptu. It was necessarily based on what I understood the Senator from Massachusetts at that time to say.

If I misunderstood him in any respect, as the Senator in his speech claims I then did misunderstand him, I am not alone in that misunderstanding. I have turned to the RECORD, and I refer to it only that I may the better assure the Senator, and place it in the RECORD, that I did not intend at that time to misrepresent him, as I would not under any circumstances knowingly or intentionally misrepresent anyone. When the Senator concluded his speech, which I find in the RECORD of December 17 last, he was succeeded immediately by the Senator from Maryland [Mr. GORMAN], who seems to have understood the purport of the Senator's speech precisely as I did. I quote from the speech made by the Senator from Maryland [Mr. GORMAN] on that occasion:

Mr. President, I think the country is to be congratulated that again the Senator from Massachusetts, a great leader on the other side of the Chamber, whose reputation is world-wide, has followed the examples that we have witnessed in this body time and time again. When some question arises wherein the honor of the American people is involved, there are always enough patriotic Senators to join the minority in staying the hands of the Executive power when it trenches upon the right of the Senate or of Congress, or attempts, without the consent of Congress, by an improper and inexcusable act, to involve the country in war.

Whether or not the Senator from Maryland was justified in

employing that language in making his answer to the Senator from Massachusetts will appear from a study of what had been said by the Senator from Massachusetts.

Mr. HOAR. The Senator from Ohio will also remember that I at once rose and said that I could not permit the Senator from Maryland to put me in a false position.

Mr. FORAKER. Yes; I remember that very well.

Mr. HOAR. I disclaimed it at the time.

Mr. FORAKER. But the question remained then, notwithstanding what the Senator from Massachusetts said, and remains now, whether or not a fair construction and interpretation of the language then employed by the Senator from Massachusetts warranted what the Senator from Maryland said.

It is perfectly clear from the language then employed by the Senator from Maryland that he understood the Senator from Massachusetts to be making an attack upon the President of the United States, at least to be severely criticizing him, because of what had been done under his direction in the Panama affair. Was he or not justified in that? We shall see in a moment.

After the Senator from Maryland had concluded I made the remarks which have been referred to. I have stated how I came to make them; that they were made on the spur of the moment in answer to the speech as I understood it. I knew at the time when I rose to speak that I was not alone among the Republicans in this Chamber in the view I entertained as to the character of speech the Senator from Massachusetts had made. A number of Senators had expressed to me as their opinion of what he had said precisely what I understood him to have said. I rose, therefore, to answer, having in my mind exactly the view as to the character of speech made by the Senator from Massachusetts that the Senator from Maryland had expressed.

But I did not answer as the Senator from Maryland did. I contented myself not with opposing the resolutions—I had no objection to them—but with stating in a prefatory way that I thought those resolutions should have been offered and the speech should have been made in executive session, because at that time we had pending in the Senate—it was yet then, I believe, in the Committee on Foreign Relations—a treaty with Panama with respect to which all of those questions were necessarily raised; and if any additional testimony or evidence or knowledge was desired by any Senator, it could have been secured by asking for it in executive session, where I think it properly belonged, as well as by asking for it in open session. And it occurred to me that that was where the resolution should have been offered and there, if anywhere, where the speech should have been made.

I was not alone in that opinion, Mr. President. The Senator from Massachusetts himself seems to have had the same kind of an impression, for one of the first paragraphs of his speech on that occasion was the statement that if as he proceeded any Senator should think his remarks more appropriate in executive session, he would yield at any time for such a motion to be made. I think not only did the Senator from Massachusetts feel that at least in all probability the speech should be made in executive session, but I think every member on this side of the Chamber was in accord with me in that opinion. Therefore it is that, so far as the prefatory part of my remarks on that occasion is concerned, all that I said was entirely justified.

I then came to discuss what the Senator had said, not at any

length, for I simply called attention to the fact that he had read a lot of telegrams—all of which are set out here in the RECORD—and from those telegrams which he had just read he had drawn a conclusion. Let me read the language, that I may be accurate. I said:

He reads a lot of telegrams and draws therefrom an inference, which he states as his conclusion, to the effect that this Government, although denying, as it has been denied over and over again, any part whatever in any connivance or intrigue in regard to the matter, was yet proceeding in such a way that no other conclusion could be deduced therefrom.

Mr. President, not only did the Senator from Massachusetts say that in express language on that occasion, but he has repeated it, I think, more than once in the speech which he has just now delivered, for he has told us here again to-day, as he told us then, that from the telegrams he inferred thus and so in criticism of the Administration.

Mr. HOAR. Will the Senator from Ohio permit me? I never said the other day, or to-day, that I drew that conclusion—never.

Mr. FORAKER. Well.

Mr. HOAR. I accompanied what I said with an expression of my indignant disbelief in any such thing, but I said the President had begun his narrative at a point which did not repel it.

Mr. FORAKER. That is true. If the Senator will bear with me a minute he will not differ with me, I take it.

Mr. HOAR. The Senator said, if he will pardon me, that I drew that conclusion.

Mr. FORAKER. Let me say—

Mr. HOAR. If any honest and candid man will look back he will see that I expressed my indignant disbelief and said that the President was the last man in the world to do such a thing, and that his own character did not make it worth while for him to contradict it. But I then said, "You have sent in a story beginning on the 4th of November, instead of sending in the whole, and we want the whole."

Mr. FORAKER. That is true. I am coming to say all that.

Mr. HOAR. I was calling attention, not that I believed in it, for I said I did not, but to the fact that there were people who were made uneasy by it.

Mr. FORAKER. What I said was that the Senator read a lot of telegrams and then stated as his conclusion deduced therefrom thus and so.

Mr. HOAR. Read what I did say.

Mr. FORAKER. I am about to read it.

Mr. HOAR. Read it and see.

Mr. FORAKER. I so understand it. The Senator, after reading all these telegrams, said:

So it is clear, if this be the whole story that we have in these documents, that at least twenty-four hours, perhaps forty-eight hours, before the revolution broke out our Government had instructed its man-of-war to prevent the Government of Colombia from doing anything in anticipation of the revolution to prevent it.

Now, after reading these telegrams he said: "If this be the whole story, then thus and so." In another part of the same speech he referred to the fact that I referred to in my remarks in answer to his, that the President had disclaimed more than once on behalf of the Government and every official connected with the Administration that there had been any connivance, or any intrigue, or any complicity whatever to bring about any such result. I was speaking, Mr. President, in that connection about



these telegrams and about the conclusion the Senator deduced therefrom. I was not unmindful of the fact, but referred to it, that the Senator did say in that same speech, notwithstanding he had quoted telegrams from which he thought only one conclusion could be deduced, that he had such high regard for the President and such implicit confidence in his word and in his honor that he did not believe that was the whole story.

But how did the Senator from Massachusetts proceed? After having read these telegrams and after having made the statement that it appeared from these telegrams that we had taken these steps to prevent Colombia from doing anything in anticipation of this revolution to prevent it, the Senator used this language. This was the kind of language which impressed itself on my mind at that time: that gave to my mind the impression as to the character of the Senator's speech, to which I made answer as I did:

Now, Mr. President—

Having read the telegrams and made that statement—

I want to know, I think the American people want to know, and have a right to know, whether this mighty policeman—

Referring to the United States—

instructed to keep the peace on that Isthmus, seeing a man about to attack another, before he had struck his blow, manacled the arms of the man attacked, so that he could not defend himself, leaving the assailant free, and then instantly proceeded to secure from the assailant the pocketbook of the victim, on the ground that he was *de facto* the owner?

To whom did that language apply? Of whom was that language spoken? Were we not warranted in drawing the conclusion from the Senator's statement that the telegrams he read showed what he claimed they showed, and from his statement—this figure of speech about a policeman—were we not warranted in coming to the conclusion that the Senator was making an attack on the President which, if we meant to defend the Administration, it was our duty then and there to take issue with? But how did we take issue with it? I said, in answer to that:

He reads a lot of telegrams and draws therefrom an inference, which he states as his conclusion, to the effect that this Government, although denying, as it has been denied over and over again, any part whatever in any connivance or intrigue in regard to the matter, was yet proceeding in such a way that no other conclusion could be deduced therefrom.

Mr. President, as I read these telegrams in the light of our duty and obligation to Panama with respect to the transit across the Isthmus, I see no occasion on to draw therefrom any inference except only that the President of the United States was alert to do, in a patriotic way, his duty as the President of the United States.

Then I was interrupted by the Senator from Massachusetts, who claimed that I had misrepresented him. That brings us back to the question which we have just now been discussing and of which I trust we have made disposition. I did not intend to misrepresent him. I do not think now I did misrepresent him. I understood the Senator to say then, and as I read his speech now I understand him to have said then, that these telegrams which he read told what he thought was an imperfect story, and that from these telegrams there was only one conclusion to be deduced, and that was one which justified criticism of the President and criticism of the Administration.

I did not so read them. I called the Senator's attention to a fact which he had already referred to in his speech of that date—namely, that we had before us not only these telegrams to construe and interpret as on their face they might read, but we had also before us the statements of the President.

The Senator from Massachusetts had referred to the fact that the President had caused to be published in one of the newspapers of the country an extract from the message which he had prepared to send to the special session of Congress in November, but which he did not transmit to Congress because it became unnecessary by reason of these events, but which he had prepared before those events and afterward had published to show that he was telling the truth when he said to the country, and said officially, and said in every other way in which he was called upon to speak, that there was no complicity, no intrigue, no connivance.

I said in that connection that the objection I took to the Senator's speech was that, boiled down to the fine point, he was calling upon the President of the United States to prove that he had been telling the truth, and I did not think that was becoming. I did not think so then; I do not think so now. I think we had a right to judge the President—as the language ascribed to him by the Senator from Massachusetts shows that he judged him then, and judges him now—as a man of honor, as a man of truth, as a man of patriotic purpose, as a man of lofty character, who would spurn to do that which the interpretation that I put upon what the Senator said amounted to an insinuation of.

Now, that is not all that the Senator from Massachusetts said. I speak of this at more length than I perhaps should, simply because of the unqualified and unlimited respect and admiration I have for the Senator from Massachusetts. I think all he said in praise of his predecessors in the office of United States Senator from Massachusetts was worthily and befittingly said. I will go further and say in this presence what I know every member of this body on either side of the Chamber will concur in, that great as were Webster and Sumner and the other great men to whom he referred, they were not so great but that the senior Senator from Massachusetts is a worthy successor in that great line. There is not a man here, on either side of this Chamber, who does not respect him for his great learning, for his great ability, for his zeal in the public welfare, for his fidelity to duty in all the relations of life, both public and private. When a man for whom I have such unbounded regard thinks I have in any degree whatever misrepresented him or misunderstood him, I want to take some pains to show him that I at least did not think I was doing so.

Now, after the Senator had made the remarks I have quoted, he proceeded—I am not reading all—first to speak in high eulogy of the President, to whom he had just referred, as I supposed, as a policeman who had manacled a man who was about to be struck and then taken his pocketbook away from him and claimed it by some sort of *de facto* right, and then he said:

Now, Mr. President, as the matter stands on the information given to the House in Document No. 8, the shores of Colombia were patrolled by armed vessels of the United States in order that that Government—the Government of the country—should not take any steps to prevent it.

It does not appear in that document where or from whom our Administration secured the information that led to these orders.

According to the documents sent to the House by the President the first tidings of any revolution that came either from Panama or Colon, or any expected revolution, came November 3, the day the revolution happened. As the statement is now left in the official communication to Congress, this revolution was known at Washington before it was known on the Isthmus. All our Government, by its own statement, seems to have done in its anxiety that transit should not be disturbed was not to take measures that violence should not occur, but to take measures that violence should not be prevented. It performed its duty of keeping uninterrupted the transit across the Isthmus only by interrupting it itself—interrupting it itself in its most sacred and rightful use, that of the lawful Government of the country moving its own

troops over its own territory that it might prevent a breach of its peace and an unlawful revolution against its authority.

Mr. President, is there any doubt that, as now standing unexplained, this was an act of war?

And so I might read on at greater length. It is true that the Senator from Massachusetts did mention in that speech his high regard for the President.

He did speak of him as a man in whom he had implicit confidence. He did speak of him as a man who appeared to him, as he knew him to be, incapable of that which these telegrams showed, as he construed them. But, Mr. President, of what avail is all that when accompanied with the Senator's interpretation of them, coupled with the declaration that they admit of no other interpretation than that which he put upon them, as I understood him. And that, Mr. President, remember all the while, in the face of the President's declaration, to which the Senator in that very speech referred, that there had been no complicity and no intrigue and no connivance.

I had confidence, and every other Senator on this side seemed to have confidence at that time, in the truth of what the President said, and that it was unnecessary to require him to produce evidence that he had not been making misrepresentations and misstatements to the American people and to the Congress of the United States.

Now, the Senator says that he is entitled to credit for having brought this all about. I do not know but that he is, and I gladly accord it to him. But I still remain of the opinion that it could just as well have been secured in executive session, and it could have been secured there, I believe, with more propriety. There was never a moment when the President withheld from the Congress of the United States or the American people any information in regard to this matter—never one moment—and as soon as he learned that there was a disposition to have more light than had been given he directed that every scrap of information on the subject be compiled and sent to the Senate in order that we might be fully advised. The President would have done that just as readily had he been asked about it in executive session, and we would not have what perhaps is not in and of itself harmful, but what I think will be found in the future to be a bad precedent—the discussion in open session of the merits of a treaty which ought to be considered only in executive session.

Mr. President, as I said when I rose, I agree with the Senator in his speech except only in so far as he saw fit to criticise what I said in answer to his speech on that former occasion. I agree with him in the view which he takes of that which was done by our Government. I agree in the estimation he has given us here of the President of the United States—of his great ability and his high character as a worthy official to be the head and Chief Magistrate of this great Republic.

I agree with him that all that has been done is consistent with honor and a patriotic purpose and that there is nothing from beginning to end that can be legitimately criticised. The only thing I differ with the Senator about is the fact, as he has expressed it, that he seems to think I was liable to some criticism for taking the view I expressed on a former occasion of that which he had seen fit then to say. I rose merely to correct that and to say that I had no idea then of misrepresenting him. I have no idea of misrepresenting him now, nor would I under any circumstances misrepresent any Senator or anybody else with



whom I might chance to come into debate. One engaged in controversy does not advance himself by misrepresentation, especially when he is speaking to the same audience that heard the other side. I undertook then to deal fairly with this matter. I am only now undertaking to set myself right, if it be necessary I should do so in order that I may continue to enjoy undiminished the friendship, cordial good will, respect, and regard of the Senator from Massachusetts.

Mr. HOAR. Mr. President, my honorable friend from Ohio, I have no doubt with absolute sincerity, expressed respect for me, and what I have to complain of is that he accompanies that expression of respect for me by apparently expressing his total disbelief that what I say I meant and said I did mean and say.

Mr. FORAKER. Will the Senator allow me to interrupt him there?

Mr. HOAR. Certainly.

Mr. FORAKER. Possibly that was due to the example the Senator from Massachusetts had set me when he spoke so highly of the President and in the same speech so severely criticised him. [Laughter.]

Mr. HOAR. That is what I want to come to.

Mr. President, the Senator from Ohio has totally perverted what I said the other day. He totally perverted it then, and he totally perverts it now, and he does that not from any desire to do so, but solely because of being in a very critical frame of mind—

Mr. FORAKER. Will the Senator allow me to interrupt him to ask him a question?

Mr. HOAR. Forty, if you like.

Mr. FORAKER. Will the Senator kindly tell me in this connection to whom he referred when he spoke of the policeman?

Mr. HOAR. I am going to tell you that.

Mr. FORAKER. I may have misunderstood that figure of speech.

Mr. HOAR. I did not refer to the President. I referred to the attitude in which half a story, a page torn out of a great volume, would leave the American people if the rest of the volume were not supplied. Erskine once illustrated that when the attorney-general undertook to charge his client with saying something wrong and omitted half the sentence. He said it was as if a man should quote the passage of Scripture, "The fool hath said in his heart, There is no God," and leave out the words "The fool hath said in his heart." The Senator from Ohio takes my sentences, reads half and leaves out the rest, and then he undertakes to represent what I said, again and again and again.

I said of a story of a series of transactions which had been going on a long time, you have only a page which begins in November. Suppose, for instance, a man was giving his description of a fight, and he should say that A struck B half a dozen times and then B struck A, and the Senator should leave out the first sentence and put in as the whole story that B struck A. So it is as if he was telling the story and somebody should get up and say: "You have not put in the previous thing which justified that blow: you have left it to appear that this man committed an unprovoked assault."

Now, just see how the Senator goes on. He reads what I said regarding telegrams, and he went on and he says the Senator draws from that a conclusion that the President has been guilty of unworthy conduct. I added to that sentence an expression of

my indignant disbelief that the President had been guilty of unworthy conduct. I said he is the last man in the world to do it, and the imputation is so foul that, in my opinion it is not worth the while to reply to it. That is what I said.

Then I went on to say that the President has undertaken partly to contradict it by giving a message to the press which does not contradict it. So he has shown that he thinks it ought to be contradicted, but he has not yet contradicted it. Now, if the Senator from Ohio will give me his attention, I said——

Mr. FORAKER. I am giving the Senator attention; and the Senator, I know, does not mean to misrepresent me, either.

Mr. HOAR. I do not mean to do so.

Mr. FORAKER. What I said on the former occasion and what I say now is that the Senator, confining himself to these telegrams as though they told the whole story, drew this conclusion.

Mr. HOAR. No; I said I did not draw the conclusion.

Mr. FORAKER. I know, and I stated that the Senator said that in another connection, but I was talking about the interpretation of the telegrams. I was contending that the telegrams did not warrant that statement.

Mr. HOAR. I said that the telegrams standing alone did not show the previous story, which completely exonerated the President, and would do so in my judgment. That is what I said.

Mr. FORAKER. With that and with——

Mr. HOAR. Standing alone.

Mr. FORAKER. The Senator also commented on the President's publication of that part of his message which the Senator said the President had published for the express purpose of showing that there was no connivance.

Mr. HOAR. I understand——

Mr. FORAKER. In other words, we had the President's own statement about it added to the telegrams, and I was interpreting the telegrams in the light of what the President said.

Mr. HOAR. Now, let us come to that. That is another instance of the way the Senator from Ohio deals with this matter. The President did not contradict it. He did not disclaim it. He did not say a word on the subject except that he gave to the press a message in which he proposed to take possession of that canal by a different right. That is all. Then the Senator gets up and says that after the President had indignantly contradicted it I put this question. I called attention to the fact that the President had not indignantly contradicted it; that he had only sent in a message which only impliedly, by indirection, perhaps, would be inconsistent with it after he had contradicted it. I said you do not need to contradict it, but if you are going to do so, contradict it plainly and flatly.

Now, that is what I find fault with the Senator from Ohio for. He represents me to-day as having said these things after a contradiction by the President——

Mr. FORAKER. I said if——

Mr. HOAR. Let me finish the sentence; then I will listen to the Senator.

I said the President has shown that they need attention, but instead of sending in a contradiction he sends in merely this message to the press, and I think I know myself, I replied, that the whole thing is false. He is the last man in the world to be guilty of it; he is utterly incapable of it, so incapable of it that he does not need to notice it; but when he does notice it it is better for him



that he should give the whole story and that he should contradict it. Now, after saying that, the Senator from Ohio to-day says I said all this after the President had indignantly contradicted it. I deny it.

Mr. FORAKER. I do not know that I used the word "indignantly."

Mr. HOAR. Yes, you did.

Mr. FORAKER. Possibly I did. If I did I will stick to it. [Laughter.] It was indignantly denied, and not only denied indignantly, but with a good deal of feeling.

Mr. HOAR. By me?

Mr. FORAKER. No; not by you.

Mr. HOAR. The Senator will pardon me. Up to the time I had made that speech I was the first man on the face of the globe who had given this infamous charge against the President a flat and indignant contradiction.

Mr. FORAKER. It may be that that is true so far as speeches in the Senate are concerned, but I quite differ from the Senator as to that. Here is the language that was employed by the Senator—

The PRESIDENT pro tempore. Does the Senator from Massachusetts yield to the Senator from Ohio?

Mr. HOAR. Certainly; I like to hear him. [Laughter.]

Mr. FORAKER. I am always delighted to hear the Senator. Here is the language I referred to. When in the speech of December 17 I referred to the fact that the President had entered a denial of any complicity, I said in that connection that he had done so in one instance by publishing an extract from his message which he had prepared to send to the special session, but did not send.

Mr. HOAR. And he did not contradict it at all.

Mr. FORAKER. Here is what the Senator said about it. It shows that the Senator understood it was being indignantly contradicted, and I did not imagine that the Senator would take any other view at this time or express any other view from the language he then employed. The Senator said, referring to that fact:

He has taken the uncommon step of communicating to the press extracts from a message which he had prepared to send to Congress, written before the revolution occurred in Panama, in order that the American people might know that it was impossible that he had expected it and still more impossible that he had done anything to bring it about.

Now, Mr. President, what I said on that occasion and what I say again is—

Mr. HOAR. Read the last sentence of my language.

Mr. FORAKER. Well, I will read it; but does the Senator qualify that or contradict it?

Mr. HOAR. I explain it.

Mr. FORAKER. Now, let us see.

Mr. HOAR. Read what I said about his having decided otherwise.

Mr. FORAKER. I will read it.

I did not think myself that such an assurance to the public was at all necessary. If the President had sent for any member of the Senate and had proposed to show him that message, he would, I think, have been told there was no occasion for him to seek to prove by any evidence beyond that of his own character that he had had nothing to do with any indirection or artifice. But he decided otherwise. And having decided otherwise—

I suppose that is enough.

Mr. HOAR. That is what I wanted.

Mr. FORAKER. I beg pardon.

Mr. HOAR. Now read the next sentence.

Mr. FORAKER. You will find me entirely accommodating. I simply did not want to take time.

And having decided otherwise, I suppose he will like to have the imperfect evidence afforded by the communication to the House of Representatives and by the message at the beginning of the present session made complete, and whatever is lacking to a complete answer to the charges which have been made in the press supplied.

That is the language to which I referred. I said the Senator knew when he made that speech, December 17, that the President had entered a denial of complicity and intrigue on the part of this Government, and I referred in support of that to the fact that the Senator had quoted the publication by the President of an extract from his message with the purpose of thereby making a denial, and that it was so understood by the Senator himself.

Mr. HOAR. Now, Mr. President, can not the Senator see the difference between saying that the President had entered a denial and pointing out, as I did, that all he had done in order that this might be contradicted was to send in a message which did not afford a contradiction?

The President has not said anything about it beyond that, and I called his attention and the attention of the Senate to the fact that there was no denial there, that the evidence was incomplete, and that it was imperfect evidence. I did not say what the Senator keeps saying over and over again I said, that the President had entered a denial. He had not entered a denial.

Mr. FORAKER. Mr. President, what I have said over and over again is that the President had denied it.

Mr. HOAR. That I deny.

Mr. FORAKER. This is not the only case in which he denied it. It had been denied repeatedly before that time. It had been denied from the State Department on behalf of the President. The President has not sent in a message to Congress making an explicit denial, but the President had made this publication, which I understood and the Senator from Massachusetts understood to be intended to show that denial. The Senator so interpreted it in his speech. The Senator had no question in his mind when he made that speech but that President Roosevelt had denied complicity and intrigue.

Mr. HOAR. The Senator is mistaken.

Mr. FORAKER. I refer to the Senator's language.

Mr. HOAR. There had been, to my knowledge, no denial from the State Department and no denial from the President.

Mr. FORAKER. The Senator misunderstood me. There was no official denial. I did not mean that.

Mr. HOAR. There was no denial, official or unofficial, anywhere. The President undoubtedly sent a document in order that the people might infer that he expected at that time to deal with this thing in another way, and I got up and said I do not believe a word of these charges; they are foul, infamous, inconsistent with the President's character; but he has undertaken not to deny them explicitly, not even to tell the whole story, but only to tell a very small part of it, which does not accomplish the contradiction that he proposes.

Now, I want to say one thing—

Mr. FORAKER. I do not want to be misunderstood and I do not want to be misrepresented. When I say that it was denied by the State Department, I do not mean that Secretary Hay, as

Secretary of State, published a card with his name signed to it, but I do mean to say that in the papers it had been published repeatedly on authority received from there that there was no truth in these stories. The very first moment that the charge was made it was met with such a denial.

Mr. HOAR. Now, I want to put against the affirmation of the Senator from Ohio my own explicit affirmation to the contrary.

Mr. FORAKER. Well, we will look at the newspapers.

Mr. HOAR. Not only was there no such denial, formal or informal, authorized or unauthorized, before I made my speech, but, to the best of my knowledge and belief, I never heard of it. Will the Senator set out the paper where it occurred? In what document?

Mr. FORAKER. I will say in all the papers. Does not the Senator remember that when the President published the message he referred to, and what he said he understood to be intended for a denial, it was commented on in all the papers of the country?

Mr. HOAR. I do not know. I never heard of it, and I do not believe it now.

Mr. FORAKER. I am talking about the publication of the extracts from the special message. I said when it was published—

Mr. HOAR. I have the floor.

Mr. FORAKER. I am asking a question.

The PRESIDENT pro tempore. The Chair must call the attention of Senators to the rules. Does the Senator from Massachusetts yield to the Senator from Ohio?

Mr. HOAR. It shows how confused the Senator's memory is in these things. He has been talking all the time of the publication of the message.

Mr. FORAKER. No, Mr. President.

Mr. HOAR. He was talking of the State Department, and what he says was published in all the papers.

The PRESIDENT pro tempore. Does the Senator from Massachusetts yield to the Senator from Ohio?

Mr. FORAKER. Will the Senator allow me a moment?

Mr. HOAR. I yield to the Senator.

Mr. FORAKER. I have made no such statement as that. I said the denial had been made over and over again, and I thought it had been. That I can substantiate without any trouble. I called attention to one of the denials, and I called attention to it because the Senator himself had called attention to it, and had placed an interpretation upon it, to wit, the publication of the message, as I said a moment ago, in all the papers, and the message when it was published was discussed and was understood to have the effect or as intended to have the effect which the Senator himself places on it.

Mr. HOAR. Mr. President, can not the Senator see the difference between saying that I do not believe any such thing about the President is true, and that he has sent in a document intended to operate as a denial? But when we come to look at it, it does not deny, it is not a denial, and therefore he had better send a denial that is a little more explicit.

Mr. FORAKER. Certainly; I see that distinction, and I readily concur. I am talking about the specific interpretation the Senator himself made.

Mr. HOAR. Now, Mr. President, that is the way the Senator from Ohio has treated this subject, and the way he has treated it to-day. I repeated these telegrams. The first thing in that his-

tory was the telegram to one of our naval officers that if Colombians or anybody else should attempt to land troops—of course nobody but Colombia would attempt to land troops—on that Isthmus they should be prevented. That was the beginning of the story: and I said, arguing for a resolution of inquiry which I had been prevented from getting through, is it not true that the American people have a right to know?

Then I went on to add in the next sentence that it was an affront almost to ask such a question; that the President was incapable of such a thing, and it is not worth noticing except that the President has noticed it, and he has noticed it without any explicit denial, and he has noticed it merely by saying, "Here is a document," and when you look at that document it does not deny it. Then I went on to say that as the statement is now left the revolution was known at Washington before it was known on the Isthmus.

Then I went on to add that the President having decided otherwise, that is, to make a statement—

I suppose he will like to have the imperfect evidence afforded by the communication to the House of Representatives and by the message at the beginning of the present session made complete, and whatever is lacking to a complete answer to the charges which have been made in the press supplied.

Then I said at the close of my speech that I did not undertake to say there was anything that had been done by our Government open to criticism.

Now, Mr. President, the Senator undertakes to criticize me because I did not offer the resolution in executive session. The reason why I did not bring it up in executive session was because I supposed it would go through as a matter of course. Does the Senator now claim that that resolution, as I offered it, was not one which in the ordinary course in the Senate would go through as a matter of course?

Mr. FORAKER. No; I do not.

Mr. HOAR. Very well.

Mr. FORAKER. As the Senator knows, I was then engaged in an important examination before a committee and I was not present at the sessions of the Senate at that time, and I did not know that any objection was made to such a resolution. I did not know it had been offered. But still I think it would have been better, having a treaty before us, if it had been offered in executive session.

Mr. HOAR. Now, then, Mr. President, the Senator admits that the resolution I offered should have gone through in the ordinary proceedings as a matter of course. In fact, that resolution was obstructed at every point, and if I was going to get it adopted at all I was bound to state the reasons for it. I stated them, and I put into words my emphatic belief in the utter righteousness of the President's conduct all through and that the charges against him were totally false. I made that speech with a view of bringing out what the speech or something else has brought out, and though the Senator from Ohio has done me injustice in many things, he has at least done me justice in one thing, for which I thank him, and that is that what I have done in this matter has been a public advantage, an advantage to the President and the party to which I belong. Now, if that be true (though I am afraid the Senator said it in the kindness of his heart and not that he believed it was wholly true), I am perfectly content to suffer any personal consequences now or hereafter.

Mr. FORAKER. I did not say anything in my kindness of



heart: I said it because I believed it, but I accompanied it with the statement that I thought the same good could have been subserved if the Senator had offered his resolution and brought on the debate in executive session, and that I thought it more properly belonged there. That is what I said in that connection.

Mr. HOAR. Very well; then I have got the admission of my chief antagonist and the mouthpiece of all the rest that I have done a great public service in this matter. I am quite content to bear any personal oburgation from any quarter.

Mr. FORAKER. The public service that the Senator has rendered is one that would have been rendered by any Senator who had called for any additional information. I mean by that simply this, that there has never been at any time any withholding of information by the President, or the Secretary of State, or anybody else in regard to this matter.

The President has furnished, whenever called upon, and promptly, all that he has been asked for; and when he learned that more was desired he volunteered it, as he had a right to do under the Constitution. It is his privilege as well as his duty to communicate with the Senate and send us information whenever he may see fit or whenever he may deem it good for the public interest to do so. That would have been done anyhow. It was, therefore, no difficult service that has been rendered, yet it is a service in the fact that we have more light than we had at that time.

And now only one more word. The Senator quits by referring to the injustice, as he terms it, that I have done him. Mr. President, I think the Senator has in that remark done me an injustice, and that I have not done him any injustice. I have undertaken to point out to the Senator that what I said in the Senate on December 17 in answer to him was based upon his statement as to the effect of certain telegrams which he read. I called attention to the fact that he in that speech complimented the President in the highest terms. I called attention to the fact that he said he had entire confidence in the truth and character of the President, in his honor and patriotism.

Mr. HOAR. Those telegrams were only a part, and I said that when the rest of the story came I believed the President would be completely exonerated.

Mr. FORAKER. Yes, I know; but, Mr. President, the trouble with the Senator is—and he just now gives away his whole case by employing the word "exonerated"—he thought the President could exonerate himself: in other words, the exception I took to that speech was that it was criticising the President without having a just right to do so, for I did not read those telegrams as the Senator from Massachusetts did. I said I read those telegrams in the light of the President's statement and the President's denials—denials made on behalf of the President and the Administration. The President can not go and sign an interview, sign a card, or sign a public statement as ordinary individuals are privileged to do. He is not expected to do so. But we all know how the Administration puts out information: and every Senator here knew that the Administration had denied the charge that any intrigue or connivance had been resorted to.

The Senator from Massachusetts referred to the fact that the President had published a part of his message with that purpose in view. He did not think, perhaps, the President should have



done so; but he understood that to be a denial on the part of the President of that charge, and he so expressed himself in his speech.

All I said was that I read the telegrams from which the Senator drew his criticism in the light of that denial of the President; and in view of that denial and other denials that had been made, I had absolute faith that all the Administration had done was above and beyond criticism; and the Senator himself, in the most admirable speech which he has made to-day, has said he believes that. With that I think I am content.

I did not say that the Senator had criticised the President without at the same time stating that he did not believe those attacks, but believed that full information would bring out an exoneration. What I was complaining of was that the Senator was criticising the President for that which he had done, in the face of the President's denial. I meant that, but I had certainly no intention of doing the Senator any injustice.

Mr. HOAR. Mr. President, one sentence more. I think the Senator's last statement of what I said in regard to what the President said is incorrect. It is not worth while in contradicting a statement to point out something in a document as a denial that for the purpose of contradiction is not complete; and I stated that we had better have the rest of the story, not criticising the President.

Mr. FORAKER. Mr. President, in answer to that I have only this to say: The Senator from Massachusetts certainly knows, as we all do, that the President would be busy publishing signed cards all the while if he had to negative in that way all the charges made against his Administration. In other words, it is the more dignified, the more becoming, and the more usual course which the President has taken. I do not think that I ever saw a statement such as the Senator from Massachusetts seems to think should have been put out by the President in regard to a charge of this kind.

Mr. HOAR. On the contrary, Mr. President, immediately after I made that speech the President sent in a statement.

The PRESIDING OFFICER (Mr. BEVERIDGE in the chair). The Chair must state to the Senator from Massachusetts that the reporters can not hear him when he addresses the Senator from Ohio instead of the Chair.

Mr. HOAR. The Senator from Ohio has been addressing me, Mr. President.

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. FORAKER. Mr. President, of course the President can always communicate with Congress officially, and that is the only way in which he can with propriety communicate. He had communicated officially; he had sent to the House of Representatives the information asked for. The Senator from Massachusetts read it one way; I read it another, perhaps due to the fact that I attached more importance to the denial, as I understood it to be, than to that we have been discussing.

But whether it was the one thing or the other, the point that I made then and the point I make now is that I was commenting simply on the interpretation placed by the Senator upon those telegrams. True, the Senator went on to extol the President as having a true and patriotic purpose, but still the charge was made and remains; but those telegrams, when properly interpreted, amount to only what I contend for.

NAVAL TRAINING STATION,

PUT IN BAY SITE.

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SPEECH

OF

HON. JOSEPH B. FORAKER,

OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

Friday, March 4, 1904.

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WASHINGTON.

1904.



SPEECH  
OF  
HON. JOSEPH B. FORAKER.

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*Friday, March 4, 1904.*

The Senate having under consideration the bill (H. R. 12220) making appropriations for the naval service for the fiscal year ending June 30, 1905, and for other purposes—

Mr. FORAKER said:

Mr. PRESIDENT: I think the Senate is indebted to the Senator from Wisconsin [Mr. QUARLES] to an unusual degree for a discussion of this question in the elaborate and detailed manner in which he has presented it. It has been to me, ever since this report was made, inexplicable how the board which acted in this matter could have reached the conclusion the board did reach, but it has never occurred to me—and I will not accept that suggestion now—that that board has been at fault in any sense, except only in its judgment. I have the highest respect for Rear-Admiral Taylor, the most unlimited confidence in his ability as a naval officer and in his integrity as a man. With the other officers who are associated with him I do not happen to be acquainted, and I cannot, therefore, speak of them. But it is nevertheless, as I have said, inexplicable to me how they could have reached the conclusion they did reach. So much for that.

I want now to call the attention of the Senate, although the Senator from Wisconsin has done that in a very thorough way, to the instructions under which the board acted and to the rules laid down by the board for its own government in taking action, and to the departure from those instructions and those rules by the board for some reason or other, which it is not necessary for me to explain and which I am unable, as I have indicated, to explain. The first direction was given by Congress in the provision which it enacted. That provision was incorporated in the act of June 30, 1903, which has already been quoted, but I want to quote it again. It is as follows:

Naval training station, Great Lakes: The Secretary of the Navy is hereby directed to appoint a board, composed of naval officers, whose duty it shall be to select on the Great Lakes a suitable site for an additional naval training station, and having selected such site, if upon private lands, to estimate its value and ascertain, as nearly as practicable, the cost for which it can be purchased or acquired, and of their proceedings and actions to make full and detailed report to the Secretary, who shall transmit such report, with his recommendations thereon, to Congress for its action; and to defray the expenses of said board the sum of \$5,000, or so much thereof as may be necessary, to be immediately available, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated.

In other words, Mr. President, this board, when appointed by the Secretary of the Navy, was to do, as the Senator from Wisconsin has pointed out, two things; but their action in that re-

spect was not to be final, but was subject to revision by Congress. They were to take action, however; they were to make investigation; they were to ascertain all the facts; they were to determine in their own minds upon a site for this naval station, and they were to make report of that to Congress, together with the cost of the same and all other data necessary to enable Congress to intelligently act. Then it would be for Congress to say whether or not we approved the action of that board so appointed and so acting.

Now, in a certain sense and to a certain extent they have undertaken to follow those directions of the law. But, before I point out to what extent they have followed those directions of the law and to what extent they have departed from them, I want to call the attention of the Senate to the instructions given to this board by the Secretary of the Navy when he pointed out and directed them to discharge this duty. He was governed by the statute which I have read. When he had selected his board, he issued to them a letter of instructions, the substance of which letter is quoted at page 3 of the report of the board, which we have before us as Senate Document No. 45, second session Fifty-seventh Congress, in this language:

5. The Department's orders, based on the act of Congress, required the board to determine a proper location for the station with regard to the following conditions—

Now, these are the conditions, if the Senate please, that were prescribed by the Secretary of the Navy when he appointed that board and indicated to them the duties they were to discharge and the conditions by which they were to be governed in the discharge of them:

(a) Ease of access to the point from thickly settled portions of the United States, in order that young men desiring to enlist shall not have a great distance to travel from their homes.

There is not anything of that kind in the law. That originated with the Secretary of the Navy. But that instruction was, I think, within the discretion of the Secretary of the Navy. I do not complain of it; I am only calling attention to the fact that it is the Secretary speaking in this instance, not the law, when he specifies what is meant by "ease of access" and why "ease of access" should be considered.

The first condition prescribed by the Secretary of the Navy is, therefore, that they shall consider ease of access, for the reason that he desires that young men wishing to enlist shall not have a great distance to travel in reaching that place from their homes.

Second, or "b" as they have it here—

(b) Ease of access and transportation from the point selected to the Atlantic coast, in order that the recruits when ready for sea service can be transported without great expense to vessels on the Atlantic seaboard.

(c) Convenience of harbor accommodations near the point selected.

I pass over, for the present at least, the second condition of the Secretary and call attention to the third—the convenience of harbor accommodations.

That is the third condition, one that the Secretary of the Navy expressly commanded them, in his letter of directions, to take into consideration, and which, if the Senator from Wisconsin [Mr. QUARLES] has been heard to any purpose, it appears they absolutely disregarded, for according to my information, and according to the exhibition made by these photographs, there is no harbor



facility at all at Lake Bluff, the place selected, and there is not one word that I have seen in either of the reports made by this board in approval of harbor facilities at Lake Bluff, required by the third instruction given by the Secretary.

The fourth instruction is as follows:

(d) And also by such other considerations as may suggest themselves to the board as being pertinent to this duty.

With this broad precept in mind the board has been pursuing the investigation, which has led it to the conclusion given hereinafter.

Now, Mr. President, let us see whether or not they had that broad precept in mind. The language of the statute is that a board shall be appointed by the Secretary of the Navy for the purpose of locating a suitable site on the Great Lakes. There is nothing said about any part of the country being taken especially into consideration, and the language of the directions given to that board when appointed by the Secretary of the Navy is that they shall consider the question of a suitable site on the Great Lakes. There is nothing said about the West, the East, the North, or the South, and yet, with these broad precepts in mind, as the board said, they proceeded straightway to forget apparently that the whole country was embraced within the provisions of the law and the instructions of the Secretary of the Navy, and to commence to talk to us about the States of the Middle West, as though they alone were taken into the account as manifestly they alone were taken into consideration except only in the most perfunctory manner. Other States may possibly have been thought of to the extent of finding some way to exclude them.

With these precepts in mind, however, we will see what they did. They say:

The board considers that no site will be suitable, as defined by Congress, unless it is in the general area established by the first of the above steps.

Ah, I must commence back a little.

6. The whole region of the Great Lakes possesses great natural advantages. Nature has been most profuse in her gifts, and it requires study and deliberate consideration to determine the location that best satisfies the given conditions. There are, however, certain broad principles resulting from the above precept which, if applied successively to the whole region, will lead to the discovery of a length of shore line of greater or less extent (possibly several hundred miles) which possesses as a whole preeminent advantages that will accrue to any particular site that may be selected therein.

7. The selection of a suitable site for a naval training station, therefore, consists of two distinct steps or operations:

First. The determination of the location of this area of maximum desirability, and

Second. The selection of the best site within such area.

Now comes what I read a moment ago:

The board considers that no site will be suitable, as defined by Congress, unless it is in the general area established by the first of the above steps. The first and most important matter is therefore to define the limits of this area of maximum desirability by the application of the following general principles, in the order of their relative importance:

Then they lay down the rules that are to govern them in determining in what general locality this site shall be located. They are as follows:

First. The location with respect to nearness to the center of population of the States of the Middle West that are adjacent to the Great Lakes.

Second. The location with respect to distance from the Atlantic seaboard.

Third. The location with respect to the strategy of the Great Lakes, etc.

And so on.

The first complaint I make, Mr. President, is that they have prescribed a rule which was not authorized by the statute and

was not authorized by the instructions of the Secretary of the Navy—that they should take into consideration, in determining the maximum of desirability or the territory within which it should be located, the States of the Middle West instead of taking into consideration all the States that border on these lakes.

Proceeding in that way they laid down, which was not required by the Secretary, quite a number of conditions that have been referred to by the Senator from Wisconsin [Mr. QUARLES]. I do not want to go over them in detail, but I want to point out that the first thing they did in taking the first step was to make Chicago a center of population, and then they proceeded to establish a zone, and the first zone suggested was one that included all the territory within a hundred miles of Chicago.

Then they established a second zone, which included all the territory within 200 miles of Chicago, and then they looked in the census reports to ascertain what population was included, respectively, within these zones.

Then they established a second center of population at Toledo, Ohio, and they drew a like zone, including all the territory within 100 miles of Toledo, and then a second like zone, including all the territory within 200 miles of Toledo, their theory being that they were carrying out the first instruction of the Secretary of the Navy to locate it at such place as would give easy access to it for the young men who are to attend this naval training station in visiting it from their homes. In all this they treated population as the first consideration.

They came to the conclusion that only a zone at the outside 200 miles from the center of the point taken should be considered. Thereupon they proceeded to ascertain which was the preferable zone by consulting the census to see in which zone there was the greater population.

I am speaking now simply of the two zones to which I have referred—to the 200-mile zones of Chicago and Toledo. They find, and so state in the map attached to their report, that the population in the Chicago zone was 8,651,216, while the total population included in the Toledo zone was 8,326,075, a difference of about 300,000 in favor of Chicago.

Mr. President, I do not need to stand here and contend that if a slight difference of population is to cut any figure, and if a zone is to be established by this board of arbitrary character, having reference to the ease of access, there is no reason why it should stop at 200 miles instead of 210 or 225 miles. The Toledo zone would be practically equally easy of access if the zone had been so enlarged. In other words, the size of the zone is purely arbitrary.

I call attention now to the fact that Lake Erie was entirely eliminated by this resort to zones, on the theory that the population was greater in the zone established about Chicago, and that was true by reason of the fact that the zone was limited to 200 miles instead of 210, or perhaps 205 miles, which would have changed it entirely.

If Senators will look at the map attached to the report, which is on their desks, I believe, they will see that the 200-mile zone about Toledo includes a population, as I have already pointed out, only about 300,000 less than that included in the 200-mile zone about Chicago. But they will also see that the 200-mile zone

drawn about Toledo stops practically just at the corporation limits of the city of Pittsburg. If they had extended it so as to make it a zone of 205 or 210 miles they would have included Pittsburg, and then there would have been a far greater population in the Toledo zone than there was in the Chicago zone. I do not know of any reason for excluding Pittsburg, except to keep the population of the Toledo zone below that of the Chicago zone.

At any rate, that is a mere arbitrary regulation of this board, prescribed by this board for themselves, as though they were trying, by the prescribing of a zone, to eliminate from any further consideration all the different sites that had been called to their attention situated on Lake Erie.

It is in that way, Mr. President, that it got rid entirely of the consideration of Put in Bay. This is one of the first rules they laid down, thus confining their consideration of sites to the Chicago zone. The Secretary of the Navy did not mention zones. He did not tell them to draw a zone; the Congress did not tell anybody to draw a zone. The Congress said: "Ascertain a suitable site, having this, that, and the other consideration in mind," but said nothing about population, except only as that might be inferred from the provision that there should be a consideration of easy access. That is all the Secretary of the Navy said. It was this board that established a zone just big enough for Chicago, to give it the advantage of population, and stopping it at precisely the size that they did not dare to go beyond without making the Chicago zone inferior to that of the Toledo zone.

You will see by your map that if that had been a zone of 210 miles it would have included Pittsburg, and the whole of that additional 10 miles would have been through populous territory; so populous that the Toledo zone would have had the advantage in the first of these considerations.

The second consideration that the Secretary of the Navy directed that they should take into account was access to the Atlantic coast from this naval training station. What will be the cost of transporting these young men from the naval station to the Atlantic coast when they are ready for service? On that point the board finds in favor of Toledo. They could not very well take Toledo off the map or change its relative position, so that while in the matter of population, by a resort to zones, they gave the advantage to Chicago, they could not change the relative positions of the two cities, and they find that it would make quite a considerable difference in cost—some twelve or fifteen thousand dollars a year, I think—in favor of the Government if the naval training station were located in the Toledo zone, as against the Chicago zone. The cost of transporting these young students to the Atlantic coast would be that much less.

The next thing, Mr. President, to which the Secretary of the Navy called their attention, was harbor facilities. What is meant by that? There is not a word of praise in either one of these reports, which I have been able to find, from these three naval officers about the harbor facilities at Lake Bluff. At Put in Bay, which is included within the Toledo zone, and for which I speak to the extent of securing a consideration by some fair and impartial tribunal, there is one of the finest harbors to be found anywhere on the Lakes. Fifteen feet out from the shore the water

is 35 feet deep. It is only required to be some 15 or 18 by the rules and regulations which the board prescribes for its own government. There does not have to be any dredging there at all. The harbor is there, and it is not only ample to float all the navy we will ever have on the Lakes, but it needs no improvement, no dredging, no extension, no work upon it of any character whatsoever.

Mr. SPOONER. Will the Senator from Ohio allow me for a moment?

Mr. FORAKER. With pleasure.

Mr. SPOONER. If he will turn to page 9 of Document No. 45 he will note that the inaccessibility to a harbor on Lake Erie, because of the ice—

Mr. FORAKER. Because of the ice?

Mr. SPOONER. Because of the ice.

Mr. FORAKER. I was coming to that in a moment.

Mr. SPOONER. Has much to do with the exclusion of that area.

Mr. FORAKER. And so they go farther north into Lake Michigan to get rid of the ice!

Mr. SPOONER. Where there is no harbor at all to be obstructed by ice.

Mr. FORAKER. There is no trouble about ice in any harbors around Lake Bluff, because, as the Senator suggests, they have no harbor.

Here [exhibiting] is a picture of it. I heard only yesterday that there was no harbor at Lake Bluff. I thought that of itself was a sort of bluff, but I am informed now that that information was reliable. Here we have, as was said by the Senator from Wisconsin, who put these photographs in evidence, the painting of the sun, which is as accurate in this case as in any other. It gives us an unquestioned representation of what there is there. I see plenty of hills; I see plenty of ravines; I see plenty of forests, and I see some breakwaters. Two or three of these photographs are missing. You would probably also see plenty of ice if we had them all before us.

But I do not see any harbor, and it is admitted, I think, that there is no harbor at Lake Bluff; and the reason why they say they selected Lake Bluff, although it has no harbor, is that no harbor is necessary, because these men are to be trained on the land. We don't want web-footed soldiers, but we do want web-footed sailors. We are getting ready here, as we understand it, to train such sailors as sailed with Dewey and such as have ever on the sea, in bearing our flag to victory, won for that branch of the service of the country imperishable renown. I should like for all Senators to see this picture of the kind of harbor or the absence of harbor that there is there. There is none.

Now, what follows from that? I asked my informant if they would not need some kind of a harbor. The board perhaps thought they would not, but the Secretary of the Navy thought they would, and the Secretary of the Navy said, in the third paragraph of his letter of instructions, "You will consider, after you pass the question of access, the question of harbor facilities." Did they follow that instruction? Why did they not follow it? I do not know why they did not follow it, but I do know, as I said in the beginning, that it is inexplicable to me that they did



not, for it is no answer to say that these students at the training school are to be trained chiefly on the land. They are to go to the water from time to time at least, while they are there, and eventually to the water altogether. I do not need to argue that in connection with a training school for naval students we will need boats and harbor facilities, and the students will have to go upon the water in connection with that training. To say that no harbor facilities are necessary is to say that the Secretary of the Navy had an incorrect impression of what was needed when he gave this letter of instructions; at least that much. In truth, we can not well conceive of a naval training school except in connection with the water.

Now, I asked another question, and I told the Senate what it was. I also asked the question of the Senator from Wisconsin when he had the floor. I asked my informant if he knew what it would cost to make a harbor of adequate facilities at Lake Bluff, and he said he did not know, that he was not an engineer, but he had been informed that the cost would be considerably more than \$1,000,000. It did not occur to me that it might be more than that when he was telling me that there was no harbor at all there. But since I have seen these photographs I do not believe you can make a harbor there for \$5,000,000. I am not an engineer, and my estimate is not worth anything, but as a layman, guessing at it, I venture the prediction that if you take Lake Bluff you will not have a harbor of adequate facilities there at a cost of less than \$5,000,000.

Mr. SPOONER. The Senator ought not to forget that in this whole business progress has been made by the process of elimination, and the report clearly shows that harbors are necessary everywhere except at Lake Bluff, but because Lake Bluff is nearer Chicago than any of the other places, harbor facilities are entirely unnecessary.

Mr. FORAKER. That seems to have been a sufficient explanation for the board, but I have not heard of anybody else being satisfied with it.

Mr. HOPKINS. I should like to say that Lake Bluff has as good harbor facilities as Racine.

Mr. SPOONER. Have you ever been at Racine?

Mr. HOPKINS. Many times.

Mr. FORAKER. How does it compare with Put in Bay?

Mr. HOPKINS. I will discuss that later, but Put in Bay has been put out of the question by the report made eighteen months ago.

Mr. FORAKER. Ah, Mr. President, Put in Bay was put out of the question because they drew a zone, having reference to population, which stopped at the outskirts of Pittsburg, and thus excluded what would have put Put in Bay in the front. I suppose there are many in Pittsburg who would like to go to the naval school, and that that city will contribute students as liberally as Chicago, in proportion to her population. I have no doubt of it. Then why arbitrarily exclude that city?

I call attention to that because manifestly the zone thus established was an unfair zone. I do not attribute it to anything but lack of judgment and a desire to get away from the consideration of all the sites on Lake Erie and confine consideration to Lake Michigan. Certainly from every other point of view that we



have discussed, Put in Bay is as good a place as, and a better place than, many of the others, and certainly a great deal better than Lake Bluff. Put in Bay has no more ice than Lake Bluff has. Put in Bay has a harbor, and Lake Bluff has none. Put in Bay has a harbor that does not need any dredging, that does not need any improving, any extending, any expanding, with 35 feet of water 15 feet out from the shore line. It is a place of great historic interest and a healthy location. There are no mountains to dig away, no leveling, no grading. The natural conditions are not excelled by any place that has been suggested, and there is no comparison between the natural conditions at Put in Bay, so far as the topography of the surface is concerned, and the condition we find at Lake Bluff.

Now, the board considered other things. They considered rainfall. That is practically the same in the two places. They considered temperature. That is practically the same at the two places, only in so far as there is a difference it is in favor of Put in Bay. So it was on everything else. The only thing as to which Lake Bluff has any advantage over Put in Bay is that it is nearer to Chicago and it is on Lake Michigan, and they wanted to locate it on Lake Michigan, according to their report, because of strategic reasons.

Now, Mr. President, what are the strategic reasons which induced this board to pass by such places as Racine and Put in Bay, leaving them entirely out of the situation—Racine tentatively, Put in Bay cut off absolutely—the whole of Lake Erie excluded? What is the reason why they did that?

They thought Lake Michigan, inasmuch as it was surrounded on all sides by American territory, was a safer place for these naval students; that is, the station would be safer from attack in case we get into war with some foreign nation. I suppose they mean with Canada.

In the first place, I do not believe we will ever get into war with Canada or England, and if we did I do not believe the station would be in any danger, no matter where it might be along the lake shores.

Mr. ALGER. It would be near the scene of war.

Mr. FORAKER. And if it were near the scene of war, as the Senator from Michigan suggests, that is exactly where we would want it to be. So I say there is nothing that appeals to me, however much it may appeal to others, in the suggestion that Lake Michigan should be preferred because of strategic reasons.

But there is another consideration here which ought not to be overlooked. This board tells us with great particularity of the shifting sands of Lake Michigan; how the winds blow and the harbors fill up, and how there are bars of sand here and there and everywhere almost, near the shore. That is an important consideration. There is no difficulty of that kind at Racine, as I understand, and there is no difficulty of that kind at Put in Bay.

But, Mr. President, I do not care to pursue this matter further. I have said enough already, if I have spoken to any purpose, to show that this board's report should not be accepted by the Congress of the United States. We ought not to appropriate \$250,000 to establish a station in accordance with their recommendation, as I understand it to be, that we shall locate this station at Lake Bluff.

I am, therefore, in favor of a new authority which shall determine this matter, or a new board who may determine it. The Senator from Wisconsin [Mr. QUARLES] in that behalf presents an amendment. It is an amendment which, as it now stands, I can not support, but I understand the Senator is willing to enlarge it so I can support it. What I call attention to is that his proposed amendment follows after the committee amendment. The committee amendment restricts the location of this site to the shore of Lake Michigan.

Mr. SPOONER. I suppose the Senator from Ohio would like to put in Put in Bay.

Mr. FORAKER. I would rather have it put in than to have it left out. But I do not expect the Senate to agree with me in naming Put in Bay at this time. But if I get a chance to present the merits of Put in Bay to some authority that will give me a fair hearing, I will give Racine a hard tussel for it at least. I think Lake Bluff will be out of it as soon as we put it out here; but I may be mistaken about that. I am speaking only from the information I gather from the report and from what has been said here by others.

I want the committee amendment so changed, therefore, as to provide that the naval training station shall be located on the Great Lakes, just as the law provided. I do not want any "Middle West," or middle anything else, about it, and then, with the amendment of the Senator from Wisconsin following in the form in which it is now, I shall support it. But if we can not secure the adoption of that amendment, I am against the committee amendment and want it to go out of the bill altogether, for I have heard enough and I have seen enough, as a result of my investigations of what this board did, to cause me to lose confidence in their judgment.

I could not vote away \$250,000 to be expended upon the report that has been made to us. I could not do it, because the board have violated or at least disregarded the instructions of the Secretary of the Navy given to them to govern them, and they have disregarded the rules and conditions prescribed by themselves to such an extent and so without any satisfactory explanation therefor that I have no confidence or would not have that I was doing right in voting for this appropriation. For these reasons, I say, I will support the amendment of the Senator from Wisconsin, changed as I understand he is willing to change it; and if that can not be done, I want the whole thing to go out and thus leave the bill without any amendment of any kind.













SPEECH OF  
SENATOR FORAKER  
BEFORE THE  
Republican State Convention  
OF VERMONT.

Burlington, April 20, 1904.

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GENTLEMEN :

I am glad to meet in this way with the Republicans of Vermont. The whole country is familiar with the sturdy character of your republicanism, but only the man who has served side by side, as I have done, for some years now, with your delegation in the Senate and the House, can know with what constant loyalty and patriotic pride you uphold the great principles and doctrines and policies of our party.

You have always been represented in the councils of the nation by able men, but never by abler men than those who represent you now.

Senator Proctor is not only one of the leaders of the Senate, but his genial nature, his sound judgment and his almost fatherly kindness to all with whom he comes in contact have so endeared him to the members of that body that

few, if any, outrank him in the esteem and affectionate regard of its membership; while Governor Dillingham is recognized by all as not only a man of the highest character and the most brilliant abilities, but also as a leader who gives the greatest promise for future usefulness of all the younger men in public life.

Your representatives in the Senate are indeed worthy successors to their illustrious predecessors, and in honoring them you secure credit and honor for your State.

Your representatives in the House, although serving only their second terms, are already acknowledged leaders of thought and recognized advisors in the adoption of party and national policies.

I congratulate you upon such a representation as I do most heartily congratulate them upon the character of their constituency.

I account it a great honor that they united in inviting me to come here and address you on this occasion. To have their confidence and yours to such an extent is a compliment of the highest character, and one for which I sincerely thank you and assure you of my proper appreciation.

And yet pleased as I am to come here under such auspices, I experience some embarrassment on account of the subject I must discuss.

Talking to the Republicans of Vermont about the Republican party is very much like carrying coals to New Castle. I do not know of anybody who knows more about the Republican party than you do, for in the most emphatic sense of the word you are "It."

But the man who talks about the Republican party always has the advantage of having something recent to talk about, whether it is entirely new or not. He who talks this year on that subject does not of necessity have to dwell upon what we had under consideration last year, for not only every

year, but every month and every week, almost, has its own new achievements.

### REPUBLICAN PARTY AGGRESSIVE.

In other words, the Republican party does things. It is an aggressive party. It never rests on its laurels. It never stands still. It is always on the move, and best of all it never seeks to retain control of the Government because of what it has done, but only because of what it is doing and proposes to do.

This gives the Republican speaker a chance. It is different with the Democratic orator. When he undertakes to tell of Democratic deeds he is compelled to recall ancient history. He speaks of Jackson and Jefferson and the achievements of their day and generation, not of choice, but of necessity, for it has been more than fifty years since the Democratic party did anything, or has even proposed to do anything that now enjoys the approbation of the American people.

These fifty years have been a stirring period. It has been one of the most remarkable in our National life. It has been full of great questions. With singular fatality the Democratic party has been on the wrong side of every one of them; and, as it has been in the past, so is it now.

### GREAT PROBLEMS PENDING.

We are at this time confronted with great problems—new problems—problems that must be solved without the help of precedent.

In some respects they are not only different, but greater than any with which we have heretofore had to deal.

Upon their proper solution depends in great measure the good name, the good faith, the honor and the prestige of the American people.



Failure would involve national humiliation. These problems are worthy of our highest and best thought.

They call for the most enlightened statesmanship. The Republican party is in power. It is dealing with these. So far it has dealt with them successfully. Notwithstanding their unusual character and difficult nature, not one has baffled us.

But the work is not done. We are only midway in its execution. Is this the time for a change?

We are just entering upon a great National contest—a Presidential election. The question is and will be not alone one of men, but also, and more particularly, whether the party that is now solving these great questions shall be displaced and our political adversaries be substituted.

That is the paramount issue of the coming campaign, and the issue I want to discuss. For that reason I shall not stop to dwell upon any of the past achievements of the Republican party. It is not necessary.

Safe in history, as well as safe in the hearts of a grateful people, are the great works of preserving the Union, reconstructing the States, abolishing slavery, enfranchising a race, rehabilitating our finances, inaugurating sound economic policies, developing our resources, multiplying our industries, employing our labor, and securing for the enjoyment of all classes and all sections the most phenomenal prosperity that ever blessed any nation or any people.

### WE ARE "STANDING PAT."

Speaking then of what we are doing now, I want to say, in the first place, that we are "standing pat" on all the great fundamental Republican policies.

We believe in a protective tariff as much now as ever heretofore, and believe that when the proper time comes for a revision of the tariff that revision should be entrusted to the friends and not to the enemies of that policy.

We believe as much as ever in sound money, and justly point with pride to our high credit, unprecedented revenues and unbounded prosperity as the result of protection and the maintenance of the gold standard.

We do not believe, as we have been charged, in making the dollar paramount to the man, but we do believe in so adjusting the opportunities of the American people as to put the dollar within reach of all who may honestly and earnestly strive for it.

We do not believe in stifling or prohibiting great commercial enterprises, but we do believe in the enforcement of the laws that are intended to prohibit and prevent the abuses of monopoly and the destruction of healthy and legitimate competition.

Our record establishes all this, as to the past, and promises a continuance of all this, for the future.

In addition we are dealing with all new problems as they arise.

Cuba, Porto Rico, Hawaii, the Philippines, and lastly the Panama canal have all received intelligent, courageous and statesmanlike treatment at the hands of the Republican administration.

#### DEALINGS WITH CUBA.

So far as Cuba is concerned, it is one of the most brilliant chapters in the history of American statesmanship.

Through our intervention the Cubans have achieved their independence, and are to-day in the enjoyment of a republican form of government of their own creation and adoption.

One of the most gratifying facts in connection therewith is the capacity the Cubans have manifested for self-government.

They have met with the highest success in every essential sense of the word. They have shown themselves worthy of all we have done for them.

The closing incidents of this chapter have just been recorded in a reciprocity treaty, that will unite them to us in constantly increasing commercial relations and a general treaty of peace and amity, under the provisions of which they have ceded to us important naval stations and military reservations on their island.

These treaties are only just now going into operation. Under them both countries will realize the most satisfactory results.

In Porto Rico our authority is as firmly established and as much represented as in Arizona, or any other part of our jurisdiction. And in the Philippines civil government is not only established, but self-supporting throughout practically the whole archipelago.

One of the greatest troubles that now confronts us there is to rapidly enough supply school houses and school teachers, and give adequate opportunity for the study of our institutions. We are now considering legislation extending to them the application of the laws governing our coast-wise trade, and authorizing the construction of public roads and other public improvements that will as rapidly as possible bring them into closer and more satisfactory relations.

#### THE PANAMA CANAL.

And, lastly, we have recognized the republic of Panama, and negotiated and ratified a treaty with her under which the work of constructing an Isthmian canal has not only been made possible, but has been practically already commenced.

This canal is to be an American work. It is to be built by American authority and with American money, and is to be under American control.

It is to be a great, majestic enterprise, worthy of America and worthy of the high purposes to which it will be dedi-

cated. It will be open to the commerce of the world, but it will be primarily for our own benefit. We want it for purposes of National defense, and for the promotion of our own commerce.

That it is essential to the National defense needs no argument.

The experience we had with the Oregon at the beginning of the Spanish-American war settled that question conclusively.

Its necessity for commercial purposes is even more important. We have reached the point in our development where we are producing more than we are consuming.

In consequence we have a surplus, year by year rapidly increasing, which must be sold in the markets of the world. We must have our fair share of those in the Orient, or stop producing because of inability to sell.

With the Isthmian canal, the Atlantic seaboard and the Mississippi and Ohio valleys are made practically as near to China and Japan as the Pacific slope.

In this way our whole country will be placed nearer to these great markets of the future than are our competitors.

With this advantage in our favor, and with an open door, we have only to maintain our prestige and pursue the wise policies upon which we have entered.

### OUR PHILIPPINE POLICY.

Much has been said in criticism of the acquisition of the Philippines and our other insular possessions because of their cost and the expense and trouble incident to their government.

Those who thus criticise do not take a very broad view.

Great national and international transactions are not measured by dollars and cents. We are not proposing to expend two or three hundred millions of dollars to con-

struct an Isthmian canal with the idea of collecting tolls enough to make the enterprise dividend paying.

We did not acquire Hawaii, or Porto Rico, or the Philippines because we needed or wanted more territory, merely as such, nor because we wanted to extend our authority over more peoples. We had no thought of tribute, and would not exact a dollar if we could.

Our purposes were higher, broader and more patriotic.

We are proposing to build the inter-oceanic canal, not for revenue, but because of its general supreme importance ; and if we are to invest the vast sums necessary to the completion of that work we must be in a situation to defend it.

In that behalf Porto Rico and our naval stations and military reservations in Cuba become of incalculable value. Mere money does not suggest any measure of their worth.

They will enable us to command and control the Caribbean Sea, and in that way protect and defend the approaches to the canal from the Atlantic side, and that is beyond computation.

Hawaii fills a like office on the Pacific side. Those islands are so situated that with them in our possession we hold a strategic advantage that at once protects and defends not only the approaches to the canal, but our entire Pacific coast line.

In the great commercial rivalries of the Orient the Philippines will play for us a more important and more helpful part still. With them in our possession we have a base of operations that will be of inestimable benefit in both peace and war.

They lie in the very front of the hundreds of millions for whose favor in trade we are to contend against the other commercial powers.

Their acquisition and our successful government of them have greatly enhanced our prestige and influence.



If we should abandon them we would discredit the capacity and courage of our people for great achievements and cripple all our efforts to command our just dues in that part of the world.

This is not a sentimental matter. It is a practical affair of the greatest consequence. It involves a question that directly affects not only the honor and good name of the American people, but the prosperity and happiness of every individual in the American body politic; not simply merchants and manufacturers, but the farmers and wage-workers as well.

If we should surrender the Philippines and retire therefrom we could not hope to develop in that part of the globe the markets to which we are entitled, and without those markets we would be unable to sell our surplus, and being unable to sell it could not any longer afford to produce it.

The inevitable consequence would be a lessening of production affecting not only the capacity of our output but the length of our pay rolls and the demands of our home markets.

The history of the last six years records unforeseen events and unforeseen steps in expansion and general development, but all have come about naturally and through all has run a controlling vein of statesmanlike wisdom and American-like patriotism.

### SHALL WE TURN BACK?

The question now is, shall we go forward or turn back? Shall we hold on to these acquisitions, or shall we surrender them?

If we turn back what shall we undo? If we surrender what we have acquired what shall be first given up? Where is the man to haul down the flag and sound the retreat? When and where and how is the operation to commence?

What a spectacle it would be to see the United States withdrawing from Porto Rico, abandoning Hawaii and retreating from the Philippines !

Who would dismiss the schools that have been started and explain the cowardice, poltroonery, or incapacity involved, whichever or whatever it may be termed ?

Such suggestions present the character of the issue we are to try, for if the course of our Democratic friends has been marked with sincerity, they would be, if restored to power, in honor bound to reverse the policies we have been pursuing, and do all these humiliating things.

The questions that come home to us in connection with the coming election are, therefore, whether, generally speaking, we shall condemn or uphold what the Republican party has done with respect to the policy of protection, with respect to our insular possessions, the island of Cuba, the republic of Panama, the construction of a canal and the insistence upon a policy that secures for us an open door through which we can enter the Orient, there to trade on an equal footing with the other commercial powers of the earth.

These are most important questions. They are far reaching in their consequence, affecting us not only as a people, but individually as citizens of this country, without regard to section, or class, or vocation.

#### DEMOCRATS OPPOSE THESE POLICIES.

It has been said that the Democratic party has no settled policy with respect to any of these great questions. In the sense that they are a unit as to any of them that is true, for if you will consult the records you will see that they are divided among themselves. Even their leaders and their ablest men have been unable to agree with one another on any of these propositions. But that of itself is enough to dis-

qualify them for the power they are seeking. A party that cannot agree with itself ought not to expect anybody else to agree with it, or that the people will entrust it with any important commissions.

But if the Democrats are not opposed to our policies why make a change? Are they more capable of executing them than we are? If we are without issues it is only because their leaders have found it impossible to make them. They have tried hard enough. Their failures have been a great tribute to the wisdom of our work.

Note some examples: They failed as to reciprocity with Cuba; they failed as to the recognition of Panama; they failed as to the treaty providing for the construction of the Isthmian canal. They failed in their attacks upon the appropriations for the army and the navy. They are now making another effort and another failure by attacking the President because of the recent order of the Commissioner of Pensions providing that old soldiers applying for pensions under the dependent pension law shall be regarded, in the absence of proof to the contrary, as so far disabled to do manual labor when shown to be of the age of 62 years as to be entitled to the minimum pension of six dollars per month allowed in such cases. They will come nearer agreeing on this question than on any other because their hearts are in it.

If so we are quite ready and willing to have them do so, for their position is devoid of both merit and patriotism.

#### NO ISSUE OR CANDIDATE.

The truth is, the Democratic party has no legitimate issue, and in so far as it has undertaken to make one it has but floundered into its accustomed attitude of opposition without regard to merit, and, as heretofore, the result will again be condemnation at the polls.

But bad as their situation is with respect to issues, they

are even worse off in the matter of candidates. Candidates they have, to be sure. They always have had, and always will have plenty of candidates. But there are candidates and candidates.

No man yet named excites any general response. Mr. Cleveland is distasteful to Mr. Bryan, and Mr. Bryan is distasteful to Mr. Cleveland. Judge Parker is endorsed by New York, but he is not acceptable to other States and sections.

Mr. Hearst is active, industrious and astonishingly successful in his quest for delegates, but all the conservative elements of the party who are opposed to Bryan are up in arms against Mr. Hearst, who has distinguished himself by his advocacy of all the obnoxious views of Mr. Bryan.

Nobody can tell who their candidates will be, but no matter who may be chosen, he cannot be the representative of a united party or of acceptable policies.

No one has yet been mentioned in whose administration of our public affairs the people could have satisfactory confidence.

#### ROOSEVELT OUR STRENGTH.

I congratulate all Republicans everywhere that with our party it is different. We have no controversy among ourselves as to our position with respect to any great question; neither have we any controversy among ourselves as to who our candidate will be.

Our daily record constitutes our platform, and every man knows that nothing but death can prevent the nomination of Theodore Roosevelt. Nothing else should prevent it.

He succeeded President McKinley under the most embarrassing circumstances. The policies upon which we had entered were then not only still on trial, but they were on a trial of such character as to make their solution difficult and doubtful.

Only a strong, vigorous man who had a clear conception of the necessities of that situation could have taken up the work that dropped from the hands of McKinley and prosecuted it with the success that has characterized the efforts of Mr. Roosevelt.

We hear it said that he is unsafe, that he is of unsound judgment, that he is emotional, that he is too quick on trigger, but what thing has he done that justifies any such criticism?

His administration of public affairs in the Philippines has been without fault. His treatment of Cuba has met with unqualified approbation. His recognition of the republic of Panama was justified by the precedents, and has been sustained with great unanimity by both the Senate and the people.

The American people were never happier, never more prosperous, never more contented, never more powerful and never more respected throughout the world than they are to-day.

In whatever way we look we see only peace, happiness, esteem and honor both at home and abroad.

By all these tokens I congratulate the Republicans of Vermont upon the auspicious circumstances under which they have met here to-day.

We are entering upon another great campaign, but if we are true to ourselves, as I believe we shall be, and if we appreciate the responsible duties that rest upon us, as I believe we do, the election of next November will be a crowning triumph for our candidate, our party, our principles, and, best of all, for our great country.









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W. A. Hanna



# SAXBY'S TRAVELER'S MAGAZINE.

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MAY, 1904.

No. 5

## FORAKER IN THE SENATE ON THE DEATH OF HANNA.

BY MURAT HALSTEAD.

THE speech of Senator Foraker, when the Senate honored the memory of Senator Hanna, was one that will be memorable for its candor and courtesies, and that was very welcome to the people of the country at large, irrespective of sections, States, the friends and the opponents of the Administration, and the political parties that aspire to control the general and local governments. It is to be spoken of in the present tense, for it has lasting qualities, that will dwell in the history that is the memory of men and nations. It is the logic of the lives of the living Senator and the dead Senator, Ohio colleagues for seven great years of our history.

A great deal has been said, and it was becoming, of the courage as well as candor of Senator Foraker, in this utterance certain to have celebrity; but the Senator himself has been unconscious that he could have spoken otherwise than as he did. It has been remarked that he wrote his speech and read it; and that has been said by those not well informed was because he had to be careful what he said. He uttered the

things easily said because simply true, and they seemed to say themselves.

That which has so well pleased the country, in Foraker's eulogy and analysis of Hanna's career, would have been perhaps put in a more attractive way, with higher color and more vivid light and emphasis, defined, accentuated and inspiring, in delivery, but in substance the same that was composed with care and read with deliberation.

A public man of many distinctions, whose appearances to address the people are known to and cared for by the country, has, since the wires of magnetic transmission of the news for which the demand is universal, to meet an imperative call for two forms of expression, or be content with partial publicity.

The Associated Presses have for their customers the most marvelous powers that have been given into the hands of those who furnish the current history of the world to all the nations of the earth, and there is nothing in the news more interesting than the news service itself. The press constituency enlightens mankind. They are on the privi-

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leged inside, a knowledge that is a favor and a requirement that amounts to necessity, with the sovereigns and cabinets of States, the secrets of conclaves, the consolidations of capital, the representatives of labor, the Generals commanding the armies on stricken fields, and the cities where the seige guns thunder, and the wireless telegraphy transmits the news that shakes empires, from zone to zone, by the viewless and the boundless air.

The high-class speeches to be delivered at stated place and time, are called for over the wires by the Associated Press, and an urgent, arrogant request made for the copy in advance, that the telegraphic service may not be burdened, but reproduced in leaves and mailed in time for each journal to cut its own condensations, according to capacity and policy. The Senators and others have an inducement to write out their formal addresses, that they may be more largely printed if fully furnished, and have additional chances for accuracy. Many adopt the custom of preparing speeches for mails rather than wires, send a type-written document and speak all or none, or according to pleasure yield another speech before the audience. It takes an exceptionally important man to get well reported when he has for the reporter "only a few notes;" and the off-hand system is a propaganda of error.

The men whose words are deeds that all men need know, must be at pains to be accurately presented, and now the world worth knowing knows, that the reporter is the historian of the days, and that the words that go on the wires that are under the seas and over all the continents, are written with fire and immortal, if they are historical.

The two Ohio Senators in the centennial year of the State, whose birth was

hastened in time and hurried in form, that Thomas Jefferson, President of the United States a hundred years ago, might have with him in public policy a majority of sovereign States, and Ohio made it for him, spoke with approval uncommon. The Senior Senator in service, Joseph B. Foraker, and the Junior, then Marcus A. Hanna, had for themes—the former, "The Senators of the State," and the latter, "The Industrial Progress of the State." Mr. Hanna spoke right on, of the things he knew of his own business knowledge, and his eloquence was that of disseminating information. Each was the master of his subject. The address of the Senior Senator was fully prepared.

Senator Foraker, as Governor of Ohio, took rank among the first of the young men in public life, and lavished his strength in all the counties of the State and a majority of the States of the Union, in the cause of the Republican party. He was not urgent to "go up ahead," as they say, even in the Senate, but a vigilant student, and presently spoke with simple earnestness, and exactness of information, and as a lawyer of extraordinary professional address, accomplishment and learning.

He was in his youth one of the judges of our high court—the "Superior Court of Cincinnati"—and one of the best of the long line of those who gave that court its excellent fame. He resigned the office he had filled with approbation, because he had medical advice that he must take half a year of rest to regain health; and he did not feel justified in drawing so liberal a salary for so long a period, without giving the equivalent duty demanded, of hard work. He took his time at his own expense, rested and got well.

When, while he was resting, the Republicans lost the State, passing through

a zone of radical eloquence about reform, that was damaging—Hamilton County being especially at fault for the defeat—Governor Foster called upon “the old guard” and volunteers, as the next election hove in sight (the county meant Cincinnati) to name any one of our citizens who would please the Republicans of the southwest corner of the State and be Governor. Judge Foraker was the man called for and nominated.

There was great anxiety about his speech of acceptance; but the first half dozen sentences cleared every brow of clouds and aroused joyous enthusiasm. The rest was easy. Foraker was rated of the first. No county could get through a State campaign without the Governor. He was an indispensable factor, and has been accused of ambition on his merits, ever since.

The faculty of public speaking, attractively and persuasively, was not the only force the young Governor had in his equipment. He had been in the war, going in at the age of sixteen, and graduated at the end. So brilliant was he in the field, he attracted the attention of General Slocum, of New York, and accepted a place on his staff. One of the antecedents of the favored Foraker, when he was a boy with a sword, was that he led the way over Bragg’s log breastworks on Mission Ridge, sword in hand; and further on in North Carolina he was hurried across the country on the best horse Slocum knew, for a hard gallop to find General Sherman in the falling darkness nine miles away, and tell him the left wing was fighting Joe Johnson, who had struck them on the flank, and re-inforcements were wanted. General Sherman was pleased with the young man’s dash into the wood, straight as a homing bird or bee to the spot where headquarters were a bed of leaves and brush.

The Junior Senator had been trained in his youth to the relations of the substance of things, and the key-note of his centennial speech was on the advantages of Ohio in her immigrants, and her soil, climate and minerals, and his point to uplift society “from the bottom.” Later in the year destined to be the last of his life, he and Senator Foraker formally addressed the Republican State Convention, at the capital of the State, and there Hanna spoke of the President in terms that were a sweeping endorsement of his Administration, loyalty and patriotism. The two Senators applauded each other enthusiastically, and everybody applauded them.

Senator Foraker, at Chillicothe, speaking of the Senators of the State, read a written speech, in which he followed the Plutarch method of biographical sketches of the lives of momentous men, by contrasting them, pairing off statesmen and heroes by comparison of resemblance and contrasts. This is the special style and charm of the famous “lives” by the famous biographer of ancient history, that go by his name.

There could not be readily found a better example of the method of Plutarch than the mutual regard and the contentions of Hanna and Foraker, who for seven years held the Ohio seats in the National Senate chamber, and were equal to any other pair of Senators in the chamber. Nothing was more frequently or justly said by the spectators in the Senate galleries, than that the two Ohio men were of the highest mark; and a cordial share of State pride in them was a pleasure not limited to one party, or disturbed by any body.

There is a pair of grand old Senators from Alabama, whose extreme age is frosty and kindly and full of strength—Senators Morgan and Pettus—answer for the State, and the beautiful name,



"Here we rest." They are always pointed out to strangers. Mr. Morgan is the only man who never corrects the proof sheets of the official reports of what he says in the Senate, and mars no proof sheets. Various methods are adopted in the use of words spoken in debate, and the members of Congress allow themselves large liberties. Depew has the reputation of giving a more constant attention to the proof reading than any other Senator bestows, and no Senator is more fluent, precise and accurate than he, as he speaks.

In reference to the high mark of Senators or Congressmen, or other statesmen, of the force of character and certainty that their names will not be forgotten, it is not affluence in speech that fixes endurance. Mr. Hanna's effort that deeply influenced legislation was that favoring the Panama rather than the Nicaragua canal, that our fleets of commerce and war may pass easily between our ocean fronts. Mr. Hanna's speech made that a solid proposition, and it is a monument that will last to doomsday; and there has been no sufficient answer to put aside proposed subsidies of the ocean steamer lines, if owned by Americans, that meets and overcomes Mr. Hanna's true, plain story of the preferential policy of our Government for American ships on the great lakes north of us. His speech in a sentence was: Give our ships on the oceans the favor that yields the commercial navy on the lakes its prosperity! Many Senators have lived long and prospered in the public opinion, whose ability has not been stamped as creative by a great fact like Hanna's speech for Panama.

Senator Foraker has to his credit, as a statesman's thought and lawyer's art, the Porto Rico law of the land, making plain the way for territorial rights and

national expansion.

In the Ohio centennial oration on Senators by Senator Foraker, he referred to the resemblances and discrepancies of far-famed Senators, with the same admirable judicial balance of powers and art of presentation, true and kindly, critical but pleasing, and was stronger in gentleness than prone to see the uncongenial side. Indeed, there is "charity for all, malice toward none," kindness for everyone. There pervades the lines and the tones of this tribute the most tenderly human clause of the Lord's Prayer—"Forgive us our trespasses as we forgive those who trespass against us"—that is the divinity of philosophy.

The Ohio Centennial Book is a solid structure, and will go down to other centuries. A hundred years hence and centuries remote, the orators of the Senators and on the centuries, can find no better precedent for the seven years together in the Senate, and all in all included, the mutual respect and good fellowship of Marcus A. Hanna and Joseph B. Foraker, fellow Senators in the same years, for the modern mother of the Presidents and their makers.

Of Thomas Ewing and Thomas Morris, colleagues, Whig and Democrat, Foraker said:

"They differed about the great questions they were called upon to discuss. They were not both right, but they were both honest. They stood for that in which they and their parties, respectively, believed, and by their powers of logic and eloquence aided in the development of the truth that ultimately found expression in the laws and politics of the nation."

Of William Allen and Thomas Corwin, who served together in the Senate for a time, by the same writer, this will be read in the records outlasting that

which is carved in marble or cut in brass:

"They had dissimilar qualities and characteristics. Both were able men and intense partisans, who proclaimed without fear or qualification their respective views on all questions of their day. They could not agree with each other, and we can not agree even yet, perhaps, with either that he was right, but we do agree that both of them thought they were right, and that whether either was or was not wholly right, yet both won honor and distinction for their State by the ability they displayed and the respect they commanded."

Of Chase and Wade, who only tolerated each other, this is said that is graceful as it is strong

"They served together from 1851 to 1855. A greater contrast could hardly be suggested. They were in harmony with each other on the great, all-absorbing question of that period, but their tastes, accomplishments and habits of thought and speech were so widely different that each had a distinct personality that reflected his own particular influence and marked him as a great, strong, individual factor in the tempestuous strife of the hour."

These and many other passages that Senator Foraker has pronounced are of identical fragrance of sentiment, all stamped with the characteristics of the man, whose last words of farewell to his colleague in the Senate, were faithful and beautiful too. We quote them here:

"His career, successful throughout, was crowned, until its very close, with a succession of brilliant achievements, that endeared him to his countrymen and gave him a permanent place of high honor, not only in their history, but also in their hearts."

The interpretation of bountiful words,

on the inspiration of the lovable side of Senator Hanna, which was most true and gentle, and the crown of the edifice of the oration, is that affection has a higher place than admiration, and that the splendor of public honor pales before the light of love, and the remembrance the heart holds, is more precious than in the stately tomes of history, written on the rocks of ages.

Governor Foraker grew rapidly in the good will of the people, and friends surrounded him who believed in his star, and were ready and resolved to promote him to still higher honors. General Sherman regarded him as a favorite, a soldier to Sherman was the salt of the earth, and he gave the Governor his fervid applause. The General was on the platform and the Governor also, when in Music Hall, Cincinnati, there arose a vehement shout for Sherman, and he made a speech that tremendously aroused the immense audience.

There was always some one to charge the Governor with interfering with President making for some one else, and he was supposed to be opposed to Sherman and McKinley, as well as to Hanna. There were some young men and old ones, who were not always timely and judicious in their enthusiasm for the Governor, and at times there was something like electricity in the air. General Sherman, speaking in the presence of thousands, massed in the magnificent Springer Hall, turned to Foraker and said: "I well remember you as you rode into my quarters when Joe Johnson struck my left in North Carolina. You burst upon us in a grove of pines, with a message from Slocum, saying he needed to be re-inforced. I recall your figure, sir, splashed with mud, your spurs that were red, your splendid horse hard ridden and panting,



and how you sat erect; and I shall not forget the soldier you looked and were. I marked you well then, and thought of the honors that were your due. You have gloriously attained them, and I believe and approve that higher, the highest honors, await you."

There was a tornado. So superb a scene was not expected. Everybody knew how General Sherman loved his statesman brother, and wondered at the lofty cry for the highest honors for another. The language of the General meant no less than the Presidency. It was so construed. The General was speaking soldier to soldier, face to face, and the candidacies of politicians were swept down the gale with huzzas.

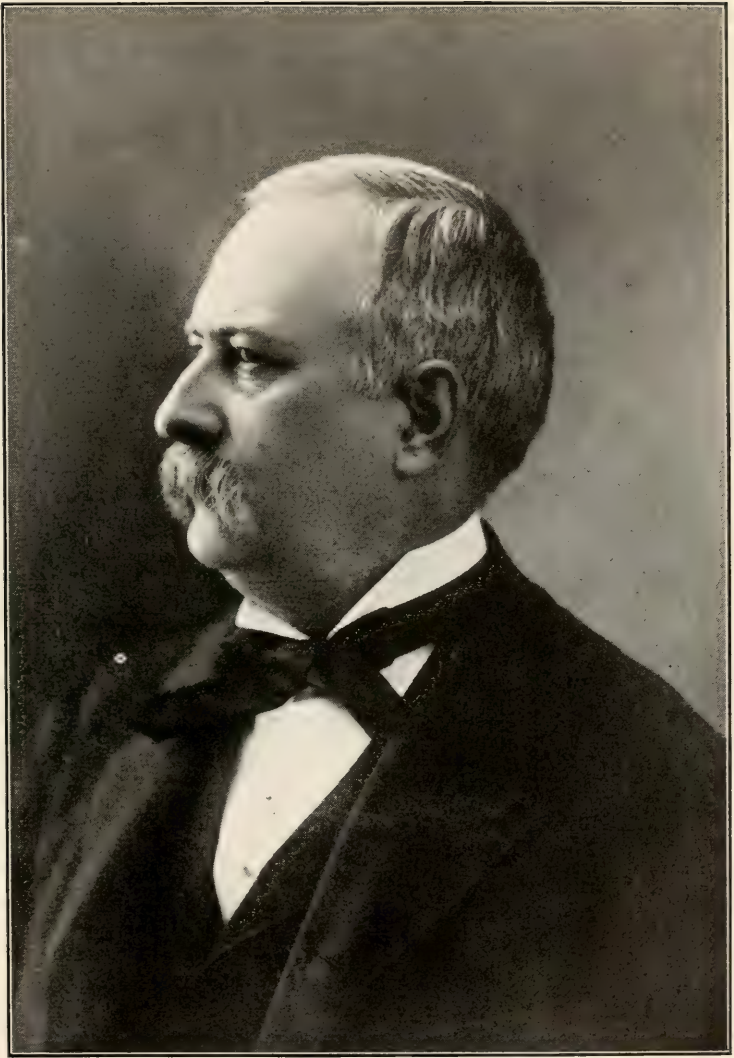
"Old Tecumseh" was intensely the friend of his brother, and had a funny way of being sorry that John was a "politician," but John really had the spirit of a soldier in him as keenly as "Old Tecumseh," as the boys would call the elder brother. John would have sacrificed his dreams for Tecumseh's glory.

The scene the General described in a startling, dramatic way, was not the first in which young Foraker figured. When Savannah had surrendered, a daring spirit was wanted to board a canoe and pull down the river, mined as it was with infernal machines, and take all chances in all haste, and communicate with the fleet, awaiting news from the army, as was afterward shouted and sung, Sherman had marched down from Ohio by Atlanta to Savannah, and the sea! The young man, the dare-devil selected for the extra hazardous duty, and the first of the army to finish the course, was the same soldier boy on the blooded horse with bloody flanks, calling for Sherman in the North Carolina wilderness, where the Confederates made their last charge

for the cause that bravery could not win, for there was a greater destiny for all Americans together, that was plain as if "written on the sky between Orion and the Plæides."

When the war was over, the heroic youth came home and hastened to Cornell University, where he came out, as everywhere, with honor, having won his own way through two great schools—the Grand Army of the United States and the grand New York Cornell College.

After four years in the army, and four years Governor of Ohio, teaching Governors of States by example how to ride in processions, he entered the Senate. So considerable was the impression he made, after a decorous and reasonable period of respectful quietude, complying with the traditions of the Senate, occasion demanded from him a statement that had matter of moment in it. He did not discharge firecrackers or seek display, but made a clean cut, clear-headed presentation of the case and carried his point, knowing what he had to say and quitting when he said it. Distinctly, when his voice was heard half an hour, he was a success in the Senate; and followed by Senator Hoar, whose literature and dignity are irreproachable, and he talked but a few moments when he paid the young Senator a very high compliment indeed, bowing to him and graciously giving credit for a point that was made by "the Senator, the very able Senator from Ohio." That was a charming, telling introduction. There were no questions of rank or ceremony. The Senator from Massachusetts and the Senator from Ohio, have repeatedly held the Senate's attention and commanded the deference of that body, in their strenuous fencing matched, each admiring while antagonizing the other. They



SENATOR J. B. FORAKER.

add to the value of the entertainment by a sense of contact, and the vibrant rasp of the weapons when the fine metal is musical.

The Republican National Convention at Chicago in 1884, marked an epoch. The time was critical. It was there, as friends of John Sherman and advocates of his nomination for the Presidency, that the late Senator Hanna and Senator Foraker became acquainted. They were at once friendly, but not hurried, just confident of mutual good will and agreeable associations.

They were not always side by side comrades, eyes single to the attainment of the same ends—far from that. Their tendency was to antagonize—not to fight, but to lead. In many things they were rivals. There was not a smooth and constant certainty that they would compete harmoniously. It seemed the question was as to the identity of the greater chief. The mastery of situations interested them. Each desired men who did not dispute his rank. The scenes shifted easily. The Senators were accustomed to giving rather than taking orders. When they fought, they were side by side, not face to face. Mr. Hanna rarely met enemies, for he had, as was said happily, “a genius for friendship.” There was a light of fellowship in his eye, and its smile on his lip, even when his wit carried a cutting edge.

The spirit of Senator Foraker’s address at the Ohio Centennial, where tributes were paid to the prominent men of the State, without regard to parties, but to the public life that was a part of patriotism, was a written and read oration, with genial words for all, and was repeated and broadened in his oration on the life, labors and individualities of Senator Hanna, whose powerful personality he well knew and admired.

General Grant, who would, I believe, have been defeated, by the third term unwritten law, if nominated when Garfield was, wrote a letter to Don Cameron and sent it by John Russell Young, who delivered it, as addressed, in Chicago; but Grant’s third term supporters were deep in the fight and had staked much upon it and would not or could not respect his wishes.

Garfield was as great a figure in the convention, exposing the fatality of a third term nomination, as Conkling in urging on the forces for Grant.

James G. Blaine and John Sherman had been for some months avowedly candidates for the nomination. Blaine was discouraged to the extent that he felt for two months—perhaps two or three weeks more—the Democracy would win, owing to the Republican third term confusion, and deciding not to be responsible for that in any degree, concluded to withdraw his name. He and Sherman met in Philadelphia in consultation upon that suggestion. Blaine declared his purpose of retirement, and proposed that both should take that course. Sherman said he would stand for the candidacy against Grant, or anybody else, if he had to do it alone. On that, Blaine decided to stand, as he was the stronger man in organization against the third term, and believed his retirement then would nominate Grant and mean defeat.

Mr. Blaine soon saw, when the convention assembled, that but one chance existed to save the party from a fall. The necessity was some one should be found to whom he and Sherman could deliver their delegate votes solid, beating the third termers, who at their utmost failed to get half the votes. This done, the National Administrations of the Republican party would be continued.



Blaine had written letters to the effect, that if Sherman would withdraw in his favor, he could be nominated in a contest with Conkling and Cameron, and the third term. Blaine was sure of it. Sherman, though not strong in delegates, thought his retirement would nominate Grant. That policy under Blaine's leadership of the majority of Republicans eventually prevented Grant's nomination and nominated Garfield.

Blaine with a great preponderance of delegates opposed to the third term over the number secured by Sherman, knew he could not, if Sherman desired, get all the Sherman votes; and that Sherman could not get the Blaine votes solid. Plainly, it was not possible for Blaine or Sherman to be nominated, for if the final contest was direct between Grant and either of them, Grant would be nominated. Garfield was the hero of the convention as against Conkling. It was positive Grant would beat Sherman more than he could with Blaine the only opposition. All the talk of a scheme for Garfield that won with his consent and co-operation, is absolutely unjust and not in the essential details an approximation to truth, though Sherman never thought so. Blaine named the man to win, and he got all the Blaine votes but one of a colored delegate from Virginia, who voted for Grant. The Sherman minority added to Blaine's full force excepting one made the majority. The Grant vote was solid to the end and much admired for tenacity. It was the "Old Guard" sure enough, and they are nearly all gone.

Unhappily, others lacked the generous spirit and clear understanding of Blaine, the masterful manager of the combination. Garfield would have thrown away the election to the Democratic candidate if he had disturbed the action of the convention by the intru-

sion of his impracticable sentiment expressed in the words that he would "rather be shot with musketry than nominated;" and that is his own phrase!

Among the friends of Blaine at this time was William McKinley, but his attachment for Sherman continued. When four years passed he was convinced Sherman was the best equipped man in the country for the Presidency, and would be so before the people. It became a familiar saying Sherman was "the best equipped man for the great office," but that the fates were against him, and there was no use being for the best man if he could not get the place. Sherman never was willing to give way for Blaine, who was perfectly confident he could sweep States by himself he could not have if there was an alliance with Sherman; and when he had two-thirds and Sherman one-third, as against the third term (non-consecutive), Sherman still thought it was Blaine's turn to clear the way.

McKinley met Hanna in Chicago as a friend of Sherman. It was in the convention of 1884 that Hanna, McKinley and Foraker met and measured their work in the world, and had a respectful regard for each other, important to themselves and the country.

There was, in that convention, a great deal of talk that was not fair that some other Ohio man ought to be nominated right then and with a rush. Foraker was not susceptible, but had friends who were not judicious. He and McKinley were followed by seekers of fortune hard to hold back or drive away. There was a clear proposition in all minds not clouded in a cloudy mistification that there could not be a delegate to the convention nominated. McKinley and Foraker were clear about that, but there were those who thought they could do the impossible with a rush and

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a shout, and knew in their own minds innumerable delegates ready to rush to a new name. There were several times votes for McKinley, increasing the strain, but he was at least sure it was untimely, was grieved to be rude to even foolish friends; and there was an impertinent urgency that he resented. There was no triangle to hang a third term issue upon. Garfield could not have been nominated in any other way than in this paper described, and the repetition of that in form was impossible, and it was an insult to McKinley to put upon him a position he refused to assume.

In this convention appeared Theodore Roosevelt, the most youthful delegate in the convention, but distinguished as a man of brains and courage when a member of the Assembly of New York and killing big game in Montana. He was the chairman of the New York delegation, and spoke for it with the vim with which the country has become acquainted. He and McKinley met in opposition twice during the proceedings. Roosevelt was for Judge Edmunds, of Vermont, whose name was presented by Ex-Governor Long, subsequently Secretary of the Navy. Massachusetts was to have voted for Sherman, in a condition that twice came to pass, but the Massachusetts delegation were held fast to their seats by showers of suggestions, that the move would prove fatal.

Foraker made a brilliant Sherman nomination speech. Roosevelt was expected in a contingency to go for Sherman, but could not see that the change would be decisive, and, therefore held it was useless, and he was probably quite right about that.

The last chance for Sherman was the promised rush from Massachusetts. Foraker expected it, and McKinley was of the same opinion in a less degree; but he

was not dazed by frantic friends and was against the folly of the "fool friends" a very sincere but rampant and troublesome people. Several of them seemed to be after McKinley, all the time, insisting that he should by all means do what Hanna called with a radiant smile, that was a stab "mediating on the Presidency." It is a grim and ghastly thing to think of that now—McKinley the third murdered president, and Hanna gone, his strong vitality so exhausted, in the latest Ohio campaign, ending in wonderful victory, that he had not strength to overcome a fever.

There were two or three members of the convention who remained assured "hat-on-the-head-personal-sovereignty" to the last, and refused ultimately to support Blaine after he was nominated (George William Curtis one of them)

Theodore Roosevelt kept faith. He was the surge repelling rock on that and gave his strength in the struggle for Blaine, adhering to the principle of fighting for a party that perhaps needed reformation and that ascertained, the fighters must be within the lines. He adhered to the discipline of the organization, on the ground that the reform of the party must be from the inside, for the certain road would be better than the road that was just possible.

At the '88 convention, Hanna had rooms at the Grand Pacific, with a wire to Washington, through which he communicated with Sherman, and I am sure the wire was a live wire. There was a real movement to bring McKinley out as a candidate. The votes for him were scattering, but he had offers of the most responsible nature for large support, if he would give the word that he was in earnest. He made that felt, but there was a threat to muster forces, raise a row, and risk a rush.

I had the privilege of Mr. Hanna's



rooms. The way to reach him was through two other apartments. In the central was a large, low cot; in the further one from Hanna a telegraph instrument and operator. Passing through to see the business man who knew all of it I saw McKinley on the cot, his face white as marble, and asked Hanna whether McKinley was ill or tired out. The reply was "the young man was 'meditating' whether he would abruptly refuse the Presidency, and was not sick but truly tired, for he had been hunted." As I was going out, McKinley opened his eyes and gestured to come to him, putting his right hand in a breast pocket, and extending a paper, roughly covered with lead pencil writing. There were three small slips and McKinley said, "Look over this and tell me what you think of it." He added, "Take a chair, read it and let me know." I remained on my feet, asked what he wished done, having an impression that proved correct. He meant to address the Convention at the opening of the next session to put a stop to voting for him. He did not say how, but "That I must do." I read the slips touching three words lightly with a pencil, handed them to him, saying, "There are three words you can rub out without harming sense or force; this has in it that you 'demand' your friends shall not again vote for you;" and I added, "'Demand' is the word to fix it." He smiled, slowly nodded, rubbed out the three words I had marked, and at the next session of the Convention, delivered the famous little speech, giving the "demand" in a voice of command that was obeyed.

In the eulogy that Senator Foraker pronounced in the Senate chamber, he mentioned that he made Mr. Hanna's acquaintance at the '84 convention. It was a good place to make new acquaintances.

Mr. Blaine did not want to be nominated when he was nominated. He would gladly have taken the nomination when it was forced upon Garfield, but was reluctant to consent to it, for he doubted whether he could be elected; and the next Presidential year he sent messages from Scotland that he must not be nominated. Then came Benjamin Harrison. Blaine, broken in health, during his Secretaryship of State, was unhappily put before the convention against the nomination of Harrison for a second term, and then Cleveland was elected the second time, and the Republican party ceased to be on the defensive, for Cleveland was a good mark, and on the fire-line.

In the second Harrison convention, McKinley was warmly urged to consent to be a candidate, but wisely again discouraged the use of his name. He was President of that convention.

The convention of 1884 was one that had several phases of mystery. Blaine, writing his *Twenty Years in Congress*, telegraphed just before the convention he wanted to see me (I was supposed to be an experienced person) and told me he was "alarmed at the prospect" of his nomination, urging me to aid in checking the course of events, saying he could not be elected, pointing out exactly what would happen and what did happen. His ticket was General W. T. Sherman and Robert T. Lincoln. He spoke of the election of that ticket as "easy as singing a song." It continues to be my conviction that it would have been so.

I thought then and think now General Sherman would not have refused the Presidency, if the candidacy for it had been made to appeal to him as a duty. That was the one essential condition. He did not insist upon an unconditional freak, though he sincerely did not want the Presidency, and would have dread-

ed it if it was in his sight waiting for him. He preferred three men to himself for the greater office—Grant, John Sherman and Blaine. There was no effort made by John Sherman or Blaine to combine their followers for General Sherman, because they knew he would not antagonize Grant. The General, I believe, would have accepted the nomination if it had been given him, as Blaine desired when Blaine was nominated; and Blaine's forecasting of the future was utterly right, as he put it. Blaine said, "We might think if we got into it with me that we would win, but we would be beaten—just a little, but certainly a little." So it was. He gave the points that he calculated down to the loss in Conkling's county.

One reason for General Sherman's reserve on the subject of the Presidency was his affection for his brother, who was a candidate. As for himself he was against himself. His real objection was that he would, as President, have been crowded by politicians. He was very near Blaine. His father and James G. Blaine's father married sisters, and General Sherman's wife was the daughter of a sister of Blaine's mother. Thomas Ewing, the second, and James G. Blaine were first cousins and bore a close family resemblance. It was stated in an absolute way by Blaine that the General could be made President by making him see it was his duty to be President. The President of the Convention was a General Sherman man; and, as it don't matter at all, so was I, and I still think it would have been better than the Cleveland episodes.

There was in the atmosphere of the Convention of 1884, the persistent, semi-confidential assertion that there was to be a new departure. It came in the defeat of Blaine, the election and then defeat of Harrison, and the nomination

and election of William McKinley twice—Hanna the mighty manager both times for McKinley, who was strongly supported, both at St. Louis and Philadelphia, by Senator Foraker. The political idea that Hanna started with in politics was that business men should take a greater interest in politics. He knew he should not have carried a double load, but once done there was no help for it.

The eulogy of Senator Hanna in the Senate Chamber, by Senator Foraker, will increase the public opinion that the senior Ohio Senator stands in the front rank of American statesmen. Ohio has been served in the United States Senate by men of breadth and strength of ability and character, and never better served if as well as in the seven years Foraker and Hanna were members. Among the names are Thomas Ewing and Thomas Corwin, Salmon P. Chase and Benjamin Wade, William Allen, Allen G. Thurman and George Pendleton, George E. Pugh, Payne and Brice. The State was never represented in the Senate by Senators whose comprehension of duty, and the range of their accomplishments and usefulness were higher, than when represented by Joseph B. Foraker and Marcus A. Hanna.

The distinction of Senator Foraker's oration in the Senate, on the life labors and qualities of his late colleague, was the dignity, bravery and good temper in which he spoke with candor, certainly not arousing the shadow of controversy. With frankness that was manliness, fair, clear and high toned, he said of the dead, that which it was worthy to say.

If Mr. Hanna could have told what manner and measure of praise was to be pronounced over his grave, he would have indicated his preference for discrimination and earnestness to have applied the injunction, "Speak of me as

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I am." He would not have asked for extenuation or apprehended malice. The honor and praise of the departed Senator were the higher and more fit because scrupulously written, and the more valued because weighed and measured.

There was a time when, as Mr. Hanna was strenuously engaged in the first McKinley campaign, he was referred to by many persons who really believed he was a harsh and rude man. He was an exceedingly occupied man, on a strain of effort, unsparing in work, anxious for the best use of time, intolerant with those who had much to say but did nothing. More than that he knew he was wearing away the strength he meant for work. He was called rough, when rapid discussions pressed to conclusions because they wore out opportunities he prized and grieved to see wasted. He grew in public life to be colossal in his power. He was accused of impetuosity with individuals that were importunate and spared not in solicitation. Still he steadily grew in agreeableness. His style of reception softened, his methods were ingratiating.

He had a sense of humor that was to him sword and shield. He had tenderness that was for those who had his sympathy and confidence. Senator Scott speaks of the emotion, even to shedding tears, when he saw a cartoon that covered him with dollar marks, engaged in tramping upon women and children. He had been so horribly cartooned and hideously misrepresented, he was pleased to appear before multitudes that the people might see he was not the brutal drawing so shamefully distorted.

He got a lot of fun out of the kindness of the public, who have intuition for good fellows. He was not a man of violence. No one was prouder of showing fair play. Even in the presence of

the cartoonists who had done their worst to disfigure his image, he was jolly and was in proof armor in the give and take of merry conversation.

The question has often been discussed whether Mr. Hanna was an orator. He certainly spoke exceedingly well, showed to advantage his stores of information, and was frequently extraordinarily interesting and instructive. His endorsement of President Roosevelt, in addressing the Republican State Convention at Columbus, was of a high order of public statement, and the thrilling tones of his voice, were from the very enthusiasm of his earnestness. The real question as to Hanna as an orator, must be decided by the definition given oratory. He lacked some of the accomplishments of a scholar. He was not a dramatist or elocutionist, or other than a man who had been educated in merchandise and lake navigation, and could make himself not only intelligible, but very pleasing and convincing. He had a wider range and deeper resources than the orator, who studies a pose and is a student of the stage for imitation. His father, a graduate of the Medical University of Pennsylvania (any one who calls the Keystone State "Pensy" ought to be amputated so that he could no more write or speak even his own name) Senator Hanna's father was an orator in the old traditional sense of the statesmen of our State of Ohio, and was sent for as a Whig to tackle Edwin M. Stanton on the stump.

Senator Foraker is a Republican, typical and generous, but unyielding and determined. Mention should not be omitted of the credit the Senator, in his centennial and contrasted history of the Senators read at Chillicothe, gave to Democratic Senators for popular laws. As to Thurman, who rendered service of the most important character to his



country in connection with the Union Pacific Funding bill, buying the road to keep faith to the government; to Pendleton, "whose greatest work was as the successful advocate of our first civil service legislation," a law that is never to be repealed. Of Senator Payne it is related he was the nominee of his party for the Senate when Ben Wade was elected, and a trusted, popular leader in Charleston Convention days.

Foraker said: "It is the truth to say that of all the many able men who have represented Ohio in national affairs, John Sherman is *facile princeps*.

"Others reached the Presidency and some of them through fortuitous circumstances and opportunities may have attained greater popularity, and a more commanding place in history, but no other stood so long on the 'perilous heights.' No other was tried in so many ordeals. No other showed such varied power of adaptation to rapidly changing and widely different conditions, and no other so completely and uninterruptedly commanded the confidence and enjoyed the respect of the whole American people as a wise, safe and capable leader and statesman."

And the Senator closed the praise of Sherman by saying, "He was the first to see the danger of enormous combinations of capital or comprehended that legislation was necessary, or even appropriate, until "he had secured enactment recently become familiar as the Sherman anti-trust law," adding the final words, "He will rank in history with Webster, Clay and Blaine."

As if anticipating some change in the Senators from Ohio, and treating his colleague and himself with the reserve and delicacy due, he ended the centennial oration on Ohio Senators with this, under the circumstances, remarkable paragraph:

"For obvious reasons I shall leave to some future orator who may have occasion to speak of 'Ohio in the Senate' an account of the work done by the present incumbents. I take advantage of this opportunity, however, to inform him in advance that if he shall be able to say of them that they earnestly strove to emulate the examples of their illustrious predecessors that, in their opinion, will be the highest character of compliment and praise."

It was worthy both men, and will unite their memory in friendly and kindly and generous recollection of both, and promote fair-minded memories; so that the true friends of either will join hands and keep step to the wholesome union that combined forces having inherent vitality and activity in common purposes and tasks, that will yield carrying on the advocacy, the illustration of the principles and purposes they held in common regard and devotion.

In the promotion of this unity and sincerity, something of the personal and political history of Ohio and the nation may be recited with the utility of truth and the advantage of those who appreciate and will emulate the exemplary frankness and commendable wholesomeness of spirit that has so profoundly impressed the country, and asserted that which is honorable and of good report in public life.

General Garfield was the latest of the Republican Presidents of the United States, born in Ohio, who was succeeded in the Presidency by an Ohio man, other than himself; and when the National Republican Convention of 1884 met at Chicago, the situation was one of delicacy, with prospects of difficulty and promise of danger.

The fact that in the campaign of 1880, General Garfield, the leader on the floor of the convention for Sherman, was

he nominee of the convention, was easily susceptible of misapprehension, specially as Mr. Sherman was not satisfied, and never saw clearly the truth that Garfield's action was not only honorable, but indisputably saved the day.

We may count the last days of Mr. Hanna, according to the standard of usefulness, as among his best days. His brain and heart and will sustained him when science could do no more to detain him from rest. He believed the position he held tenaciously, not to declare himself in the controversy as to the impending Presidential candidacy, was the best he could take for his party and country. Some day certainly—the day may even now have arrived and be shining upon us—the people will all say he was right. The urgency with which he was pressed to enter into strife, would not, if he had submitted to it, have given the party peace, but have promoted factions.

There was within the Republican party a small and noisy war party that had for their own use a rule or ruin platform; and their primary doctrine was, that the mandates of class and presumption of persons would be a command, but neither Mr. Hanna nor the

President were submissive. Mr. Hanna refused to talk, closing his lips with the firm silence, that he held in his hands the power of a peace maker, so long at least as he did not say yes or no—this not because he did not know his preference and purpose. His sagacity taught him there were times when talkativeness was wisdom, and that it was a good time to be still and wait. He had power and knew it well, and held it in trust for the people for their sake. He had given health and strength to the country and was not to be tempted or driven from his chosen way. His reserve under stress of extreme responsibility saved the situation, and has won the coming day. His influential leadership was never more felt than when he was ill and still, watching and waiting. His days were never more useful than when he did not hesitate, but stood in his tracks. If he had lived to go to the front again, his footsteps would have marked the way along the path of peace and good will. He did not die without leaving a message to the country. It is fortunate to have the last words from his hand and pen, his head clear, and his heart warm.\*

\*A few days after Senator Hanna took to his bed, never to leave it alive, President Roosevelt called at the Senator's apartments in the Arlington Hotel to inquire as to his condition and was received by Mrs. Hanna. The President asked solicitously of Mrs. Hanna as to the health of her husband, and Mrs. Hanna informed the President of her husband's real condition.

Leaving the President in the parlor of the apartments, Mrs. Hanna went to her husband's sick room and told him that the President had called to inquire about him and to wish for him a sound and quick recovery. Senator Hanna was quite conscious and yet very feeble, but he was greatly pleased at the President's visit and asked his wife to hand him a pad, saying that he wanted to write the President a note. And he did.

Senator Hanna, in a hand enfeebled by a prostrating illness and yet with a grit which

was one of his striking characteristics, wrote: "My Dear Mr. President," and then, in a few words, informed the President how deeply touched he was that he should call and ask after his health. This little note Mrs. Hanna, on her return to the parlor, handed to the President, who quickly read it and remarked how deeply touched he was himself that Senator Hanna should, from his sick bed, send him such a gentle message. Those were the last lines Senator Hanna ever wrote.

The letter to Gov. Herrick, according to the well-informed Administration Republicans, was written a few days before. In this letter, it is asserted, Senator Hanna, urged Gov. Herrick to do everything possible to avoid friction in Ohio and to see to it that the delegation from the State to the national convention was instructed to vote for President Roosevelt's nomination.



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This correspondence is a priceless legacy, already one of the treasures to be preserved among the jewels of the inheritance of the country:

WASHINGTON, February 24.—Just before Senator Hanna became unconscious, preceding his death, President Roosevelt personally called at the Hotel Arlington and made inquiries regarding him. Senator Hanna wrote a letter to the President, thanking him for his solicitude. It was the last letter penned by the Senator and with the answer by the President will be kept by the President. Copies have been presented to Mrs. Hanna. The two letters follow:

"My Dear Mr. President—You touched a tender spot, old man, when you called personally to inquire after me this A. M. I may be worse before I can

be better, but all the same such 'drops of kindness are good for a fellow.

Sincerely yours,

M. A. HANNA."

"Friday, P. M."

"Dear Senator—Indeed, it is your letter from your sickbed which is touching—not my visit. May you very soon be with us again, old fellow, as strong in body and as vigorous in your leadership and your friendship as ever.

Faithfully yours,

THEODORE ROOSEVELT."

"February 6, 1904."

With this in the hands of the implacable, unappeasable hostiles, there was an effort to prepare an organization of a party of hate; but when it touched public opinion, the insignificance was stricken out, as if by a "bolt from the blue."



## WHITE VIOLETS.

BY GEORGE DOUGLAS.

I planted violets on the grave  
Where sleeps my love alone;  
No sweetness these pale flowerets have—  
No beauty, like her own!

The longest winter's night must end;  
The earth, from death set free,  
Smiles and awakes—alas! sweet friend,  
Comes there no spring to me?

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SPEECH OF

SENATOR FORAKER

TO THE

Republican State Convention

COLUMBUS, OHIO,

MAY 17, 1904.



*As Reported in the Columbus Evening Dispatch.*



Mr. Chairman and Gentlemen of the Convention: I certainly appreciate most highly indeed the compliment involved in this call, but nevertheless I regret exceedingly that you should have seen fit to make it.

We have had a speech from the Governor, a somewhat extended speech, a most thoughtful speech, and, for the man coming after him, unfortunately, a most comprehensive speech; a speech in which he has touched upon everything, both National and State, and therefore I feel that at this late hour there is no propriety in my undertaking to supplement what he has said and said so well.

#### ARE TO BE CONGRATULATED.

But if I am to say anything at all let it be a word of congratulation; congratulation that we should be members of the Republican party. (Applause.) I thought as the Governor was speaking and referred to the record of this great political party, how proud we should be that we belong to the organization that has made so replete with glorious achievement the last fifty years of American history. (Applause.)

It is a great thing to belong to the party that saved the nation, that abolished slavery, that enfranchised a race, that reconstructed the States, that rehabilitated our finances, that has inaugurated and enforced industrial policies under which we have developed prosperity as no nation ever before has in all the history of the world. (Applause.) It is a great thing to belong to the party, to the credit of which stand all these illustrious achievements, and in addition the greatest names that have been given to American history—Lincoln, and Grant, and Blaine, and Garfield, and Harrison, and McKinley and Hanna. (Applause.)

I not only congratulate you that you belong to such an organization, but I would congratulate you also upon the

auspicious circumstances attending us as we meet here to-day to organize for the campaign upon which we are entering. It is a national contest. We are to choose a President of the United States.

But great as has been this past and great as have been our leaders in the past we do not propose in the campaign upon which we are entering to ask for the support of the American people because of anything that has been done in the past. (Applause.) We propose to ask for the support of the American people, not because of what Lincoln did, or Grant did, or Blaine did, or McKinley did, or what anybody else did in the years that have gone, but because of what Theodore Roosevelt is doing and will do. (Applause.) And that is characteristic of the Republican party. Great as is its past it never undertakes to live upon it. It is a party of action; it is a party that does things; and does something every year and every month and every week and every day, almost, of which the whole world can be proud.

#### DIFFERENT WITH DEMOCRATS.

It is different with our Democratic friends. While we have all these great achievements to which I have referred, standing to our credit during the last fifty years, there is not a single great thing during all this period standing to the credit of the Democratic party—not one. (Applause.) Not a single great name with which they can conjure in the campaign upon which we are entering! When they want to talk about something glorious that the Democratic party has done, they tell you of Andrew Jackson and Thomas Jefferson (laughter) and the Louisiana Purchase, and deal in ancient history generally. (Laughter and applause.) We do not have to do that. We stand, as I say, upon what we are doing now.



## UNFORTUNATE SITUATION.

And when they undertake to tell you about their candidates for the presidency they are in an unfortunate situation. They have neither measures nor men (loud applause) There is Parker, Judge Parker. Well, a great part of the Democratic party is speaking out in objection to Parker because he has no opinions; and another great body is objecting to William Jennings Bryan because he has too many opinions (laughter). And Cleveland, our good old friend of other years (laughter). They object to Cleveland because he is too respectable (laughter); and they do not like Hearst because he is not respectable enough (renewed laughter and applause). And so it is they are floundering along.

While they are doing that, the Republican party all over the nation is organizing, as we are organizing here to-day, for victory at the polls in November (applause). Organizing for victory because the Republican party means in its administration of our governmental affairs what the American people want.

## STILL STANDING PAT.

What is it the Republican party is doing? Well, in the first place, to quote from my lamented colleague, Senator Hanna, we are 'standing pat' on all great fundamental principles. We are standing pat on the Tariff, we are standing pat on finances and we are standing pat on our insular acquisitions: and while we are doing that we are grappling with and successfully dealing with all the new problems as they arise.

We have just completed a treaty of reciprocity with Cuba; following that a treaty, or general agreement with Cuba, under which we have acquired naval and military stations on that island which, together with Porto Rico in our possession, will give us as absolute command of

the Carribbean sea as Gibraltar gives over the Mediterranean. (Applause).

### TO BUILD THE CANAL.

And while we have been doing that we have been getting ready to build the canal. We have been busy about that now, ever since we saw the Oregon, trying to pass from the Pacific to the Atlantic side, compelled to go all the way around Cape Horn. We resolved then that we would build that canal. We have been getting ready to do it, and at last we are ready. We did not have much Democratic help. So far they have not helped to clear the way, but now we have reached a point where we are going to give them an opportunity—they can help us to dig it (laughter and applause); that is something for which they are well qualified (applause and laughter); so that in the years to come, when some orator is standing upon this platform, as Governor Herrick was this afternoon, recounting the great deeds to the credit of the American people, Democrats can take a part or a share of that credit so far as the canal is concerned, because they, too, will have had a hand in it. (Laughter.)

But, my fellow citizens, I don't want to weary you by entering upon a speech. (Loud cries of "No, No," and "Go on, go on.")

### HAVE NO TROUBLE.

Let me say a word. While our Democratic friends are having difficulty about a candidate, and while they are having difficulty to find an issue—and they will find a candidate, but they won't find any issue—we have no trouble whatever of that nature. All the world knows where the Republican party stands with respect to all the great questions of the day. Our platform is our record; what we are

doing in Congress, what we are doing the country over—and our candidate is Theodore Roosevelt. (Applause.) We nominated him so far as Ohio was concerned, in this very hall one year ago (applause); we are here now to reaffirm our allegiance to him, and pledge him anew our support, and with the other great States of the nation to march forward to a triumphant victory in November next.

#### ROOSEVELT SUCCESSFUL.

Governor Herrick well said that he deserves the confidence that we are thus declaring in him. He did come, as the Governor said, into the White House under embarrassing circumstances. There were many predictions of failure, but from that moment down until this time his course as President of the United States has been uninterruptedly successful; he has shown himself to be a great, broad-minded, patriotic, aggressive President, representing the highest and best sentiment and aspirations of the American people. I congratulate you that we have the opportunity of supporting a man we can so joyously support, and that as we meet here to-day we have no differences; we have no bickerings; we have no divisions, except only in Democratic imaginations and desires. (Laughter.)

The Republicans of Ohio owe it to the Republicans of the whole nation, they owe it to their own glorious past, they owe it to their own glorious dead, to rally for this approaching contest, as I know you will, as one man, to march to the music of triumphant victory in November next. (Applause.)



SPEECH OF  
HON. J. B. FORAKER

DELIVERED AT

The Auditorium, Chicago, Ill.

UNDER THE AUSPICES OF

THE HAMILTON CLUB,

*September 17, 1904.*



**Mr. Chairman and Fellow-Citizens:**

Before I say anything else I want to congratulate the Hamilton Club upon its splendid record as a Republican organization. It is known and honored all over this country, not only for its faithful and efficient labors in the actual work of campaigns, but also for its good character, its lofty ideals, and the high plane upon which it moves in all that it does. It is a great honor to address a meeting held under its auspices.

I congratulate the Hamilton Club also upon the name it bears.

Alexander Hamilton was not only the great creative genius of the formative stages of the Republic, but he was also the first great Republican. He not only laid the foundations of our Government, but he also laid the foundations of our party.



The predominance of Jeffersonian Democracy and Jeffersonian ideas until the Civil War prevented a proper appreciation of his work prior to that time. But when we were through with that great struggle and had passed the reconstruction period that followed, and had entered upon the career of wondrous development of prosperity, strength and power, which we are now enjoying, thoughtful men began to realize that all these splendid results had come to us from following his teachings, and then it was, when he had been in his grave almost a century, that he began to get the credit to which all now concede he is entitled. Now, by common consent, he deservedly ranks, and always will, with Washington and Lincoln, and any Republican club that adopts his name is indeed entitled to congratulations, for thus they will have with them always an inspiration to the loftiest patriotism and the broadest Americanism.

I want to say a word also about Illinois. It was here the Republican party found its first great leader, and it is here that the party of Abraham Lincoln has always enjoyed a faithful, zealous and successful support.

By reason of her population and material resources and wealth, Illinois ranks among the first of the States of the Union. Her representation in public life is in keeping with her proud position among her sister States. She has contributed many great names to American history, but she has never been more faithfully or influentially represented in the councils of the nation than she is at this time. No member of the United States Senate ranks higher as an influential, efficient, hard-working representative of his State than Senator Shelby M. Culom. He enjoys the confidence and respect of every member of that body—Democrat and Republican alike; and, while I am not here to give advice or to intermeddle with do-

mestic affairs, yet I trust I may, with propriety, make the statement that all his colleagues in that body, without respect to party or section, will be rejoiced to learn that Illinois intends to continue honoring herself by continuing to honor him with the high trust he now so creditably holds.

Senator Hopkins is a comparatively new member in that body, but he has already taken rank there as one of the ablest and most brilliant men in it. It was easy for him to pass from his long and conspicuous service in the House to his new field of labor and duty, where, as the years go by, he will add to his laurels and to the prestige of his State.

It is impossible for me to speak of your membership in the House except collectively. It is enough to say no State has a stronger representation in that great parliamentary body, over which presides that inimitable genius, sterling Republican, grand patriot, and old school Republican, Speaker Joseph G. Cannon.

One word more about Illinois. In one sense of the word it is not important to the people of Ohio who is Governor of your State, but in another and broader sense it is the common concern of all the people of this whole country.

We want to see a victory in your State all along the line, not only for Roosevelt, but also for Dineen.

You are fortunate in having so able and so brilliant a leader as your candidate for Governor.

He has the confidence and respect not only of the people of Illinois, but also of the whole nation.

Coming now to speak of the questions involved in this campaign, manifestly there can not be any intelligent discussion until we know what is to be discussed. This makes it necessary to know what issues have been joined,

Ordinarily a comparison of platforms will disclose this knowledge, but not always. Sometimes it is necessary to consider and weigh not only what is in a platform, but also what is not in a platform, to learn what the position of a party is on a particular question; and sometimes it is necessary to go further and consider past attitudes, as well as present ones, of both parties and candidates to ascertain with any degree of satisfaction or accuracy the significance of present claims.

Certain circumstances and facts have combined to make it especially appropriate, if not absolutely necessary, to go the whole length of this suggested inquiry if we would know what Roosevelt and Parker respectively stand for in this campaign.

The money question affords an illustration. We had the double standard of gold and silver at the ratio of 16 to 1 until 1873, when we adopted the single gold standard.

There was much difference of opinion on the subject, but it did not take the form of a party question or issue until 1896, when the Democratic party, under the leadership of Mr. Bryan, declared in favor of a return to the double standard at the old ratio.

The Republican party disputed this proposition, and declared in favor of the maintenance of the gold standard.

The contest that followed was one of the fiercest, because everybody recognized that the question was one of the most vital that had ever been involved in a presidential campaign.

It was regarded as scarcely second in importance to those questions that involved national life, the preservation of the Union and human freedom.

Except only slavery, and the right of secession, no

question in American politics was ever so elaborately debated.

The discussion was not confined to the newspapers and ordinary campaign speakers. All classes of people found a way to express their views. On the street corners, and in public places in all the cities and towns, impromptu meetings were held and harangued almost constantly by impromptu orators both by day and by night.

Every man's attention was attracted to the subject and the arguments that were made, and every man of intelligence who had any patriotic regard for his country, its honor and its welfare, reached a conclusion as to how it was his duty to vote, and nearly all voted in accordance with their convictions.

Mr. Bryan was sincere and zealous. He believed what he advocated, and that the predominance of his views was necessary to the prosperity, honor, good name and general welfare of the country.

The same was true as to nine-tenths of his followers and supporters.

Nearly all concede that he and they were badly mistaken, but so long as their sincerity and good faith are conceded we can respect them as honorable and well-meaning men.

There were many Republicans who shared that same belief, and who attested their faith in it by voting accordingly.

On the other hand, there were thousands and tens of thousands of honest, patriotic Democrats who believed with the Republicans that Mr. Bryan's position was unsound and calculated to bring disaster and reproach upon the country, and who for that reason refused to support him, and either voted for McKinley or

for Palmer and Buckner, or stayed at home and refused to vote at all rather than sanction what they believed to be grossly wrong and sure to bring us distress and ruin.

All these different classes acted honorably, no matter how mistakenly, because they followed their convictions and voted according to their honest opinions.

There was another class of voters at that election of which you can not say so much. It was composed of those who, for the sake of "being regular," voted with their party against their clear convictions and conceptions of what was right, knowing, or at least believing, that if their votes should enable their party to succeed, it would bring calamity, dishonor and distress to the land.

It is needless to say that this was the least honorable class—the class least to be trusted—of all the classes of voters who went to the ballot box in 1896.

Their votes were necessarily insincere. They were confessedly more interested in party success than their country's good; or at least they were such narrow and bigoted partisans that it was impossible for them to rise above party and help save the country in an hour of extreme peril.

In 1900 the Democratic party in convention assembled reaffirmed its financial position, and renominated Mr. Bryan.

History repeated itself, not only as to results, but also as to the classification of voters.

Now 1904 has come. The Democratic party has again met in national convention. It has adopted another platform, and nominated another candidate.

In view of the attitude of the party for the last eight years, the whole country was anxious to know what position on this question the party would now take.



Aside from the personality of candidates, no other question so much concerned the delegates themselves. They were divided not only as to their beliefs and opinions on the subject, but also as to what good policy required or permitted them to say; but while they were thus divided as to what their declaration should be, they were unanimously of the opinion that something should be said to show that either the party had not changed its belief and purpose, or that it had.

The question was not, therefore, whether something should be said, but only what should be said.

The usual committee and sub-committee on resolutions were appointed.

After careful consideration, and much discussion, the sub-committee finally agreed upon and reported to the committee the following resolution:

The discoveries of gold within the past few years and the great increase in the production thereof, adding two thousand million dollars to the world's supply, of which seven hundred million falls to the share of the United States, has contributed to the maintenance of a money standard of value no longer open to question, removing that issue from the field of political contention.

This plank was not only intended to define the present attitude of the Democratic party on that subject, but also to proclaim an abandonment of the position taken in 1896 and 1900.

It was a weak, evasive plank, so framed as to make it as little obnoxious as possible to free silver men, and yet the full committee debated it for sixteen consecutive hours to determine whether it should be adopted or rejected, and then rejected it by a vote of thirty-five to

fifteen, or more than a vote of two to one, not because it was too strong or too weak, but because they suddenly pretended to get new light, and to unanimously agree that what they irreconcilably disagreed about could not be an issue in this campaign.

Thereupon they reported to the convention, and the convention adopted, a platform that was absolutely silent on the subject, thereby leaving as the last authoritative declaration of the Democratic party the following plank of the platform of 1900:

We reaffirm and indorse the principles of the national Democratic platform adopted at Chicago in 1896, and we reiterate the demand of that platform for an American financial system made by the American people for themselves, which shall restore and maintain a bimetallic price level, and, as a part of such system we favor the immediate restoration of the free and unlimited coinage of silver and gold, at the present legal ratio of 16 to 1, without waiting for the aid or consent of any other nation.

All of the independent and most of the leading Democratic newspapers of the country, especially those of New York and the Eastern States, at once indignantly repudiated this action and denounced it as calculated to wreck the party; and proclaimed that Judge Parker would be hopelessly defeated unless the plank was restored, or some equivalent action was taken, and many of these papers called upon him to demand the restoration of the plank, or refuse to accept the nomination, which it was then foreseen would be given him.

This wholesale revolt unless checked made shipwreck of all hope of party success at the November elections in New York and all the Eastern and Middle Western States, and thus made sure from the beginning the election of President Roosevelt.

Under such circumstances, and moved by such considerations, with everything to gain and nothing to lose, Judge Parker, having been nominated, for the first time broke silence, and sent to the convention the following telegram:

Hon. William F. Sheehan:

I regard the gold standard as firmly and irrevocably established and shall act accordingly if the action of the convention to-day shall be ratified by the people. Inasmuch as the St. Louis platform is silent on the subject, my view should be made known to the convention, and if it proves to be unsatisfactory to the majority, I request you to decline the nomination for me at once, so that another may be nominated before adjournment.

The convention, after a long, turbulent and tempestuous consideration and debate by a vote of 774 to 194, sent him the following answer:

The platform is silent on the subject, because it is not a possible issue in this campaign, and only campaign issues are mentioned, therefore nothing in view expressed by you would preclude your standing on platform.

The Democratic press and leaders at once affected to believe that a great political stroke had been struck, and that in Judge Parker a political Moses had been found, who was to lead his party to victory.

Ex-President Cleveland hysterically announced that he could see in it all the hand of Providence, when he should have seen only the hand of that most astute New York politician, David B. Hill.

At any rate, these telegrams, it is claimed, marked

the end of the free-silver craze, and that claim makes it proper to give them careful consideration.

It will be observed that Judge Parker does not say that he has changed his mind about the gold standard. He does not say he believes it is right. He only says that he regards it as "irrevocably established," and that if he is elected, he will act accordingly. He does not claim any credit for either himself or his party because it has been established. He does not say who established it, or how it was established, much less that it was established in spite of his vote for Mr. Bryan, and in spite of all his party could do to prevent its establishment.

Clearly, he said much less than he had opportunity to say, and much less than any Republican would be expected to say at any time, and under any circumstances; and said what he did say only because the time had come when not only he but everybody else saw that he must say something or see all hopes of success blighted in the very moment of his nomination.

Better by far have another take his place on the ticket than to remain there if he must lose, in the moment of his nomination, the support of all that element which he was supposed to especially represent, and without which he could not have been nominated, and could not hope for the slightest chance of an election.

In other words, there was no special merit in seeing that the time had come for him to say something, when everybody else saw the same thing, at the same time, and almost everyone was prompting him to do exactly what he did do.

Neither is there any special virtue in what he said, for manifestly he said the very least it was possible to say and "stand muster."

Measured by these facts and circumstances, we may well have some misgiving as to the genuineness of this latest Democratic surrender, for, manifestly, if they should get into power, and have opportunity, the large element of the party that still believes in free silver might and probably would undertake to put that belief into effect.

But however that may be, Judge Parker's telegram and the answer of the convention, when accepted in good faith, constitute a high tribute to the Republican party---one of the highest ever paid it.

For if it be true that the question is so thoroughly and conclusively settled as they would have us believe, and if it be true that they have abandoned all purpose to reopen it, or to further contend about it, then it is with respect to this great money question as it has been with respect to slavery, secession, reconstruction, national banks, greenbacks, specie resumption, the constitutional amendments, and all other great questions and issues of the last fifty years.

But what of it? Are we to put Democracy in power for that?

It was commendable in the Democratic party to accept the results of the Civil War, and promise to uphold them, but it was not thought at the time when they did so that such action was good cause for immediately turning out of power the Republican party that had secured those results.

It was commendable in the Democratic party to abandon the greenback heresies, as they finally concluded to do, but that was not regarded by the American people as a sufficient reason for turning over to them the control of the Treasury.

And so now, while it is commendable for Judge



Parker and the Democratic party to announce that the free-silver craze has been abandoned, and that there will not be any more attacks on the gold standard, such action does not constitute a sufficient reason for their restoration to power.

The American people should, and will, say again, as they have said heretofore, that while repentance may be good ground for forgiveness, there must at least be a reasonable period of probation before there can be a reinstatement of confidence and control.

Much, therefore, as there may be in the new position of the Democratic party on the money question for which to give thanks, there is nothing to commend it to favor.

Especially so in view of the announcement of Mr. Bryan and other Democratic leaders that the money question is only in abeyance, and that as soon as the election is over they propose to renew the contest.

The truth is, if the Democratic party were restored to power, it would be at once developed that their leaders are afflicted with the same fatal differences of opinion on financial subjects that were developed among them with respect to the tariff during the second Cleveland administration.

Their dissensions are such that their declarations and promises can not be relied upon. Having no common sentiment, they can not have any common object. Hence it is that they are always playing at cross-purposes, and so managing as to get on the right side of a great question only after it has been settled.

Such a party can not possibly administer public affairs successfully.

Tens of thousands of Democrats are as patriotic and as anxious to do what is right as anybody else, but the

party as such is tainted with everything bad that has appeared in the last fifty years of American politics.

It is tainted with all the prejudices of slavery. It is tainted with the doctrine of secession and States' rights. It is tainted with greenbackism, populism, and communism. It is tainted with free trade and free silver and every other vagary that any crank or theorist has seen fit to advance.

The American people can no more swallow it than they could swallow a tainted beefsteak or a tainted egg; and if they happen to get it into their mouths occasionally, as they did when Mr. Cleveland was last elected, they spew it out at the first opportunity, as they did in 1896.

The mere prospect of success for such a party is enough to give all business interests a chill and a fright.

For this reason it is useless to analyze their platform declarations to determine the shades of difference thus shown between their positions and ours on the tariff, reciprocity, the trusts, the Philippines and other topics of public interest.

It is enough to know that no matter what they may say, the broad truth is, stated in a broad way, that they are opposed to us with respect to all those policies, and that they are pledged to reverse, overthrow and undo all we have done and are doing.

It is unnecessary to make an argument to defend protection. Its own record of results is its all-sufficient champion, and will continue to be such so long as this prosperous and happy people can remember the adversity, idleness, poverty and gloom with which we were afflicted under the second administration of Mr. Cleveland.

The policy has vindicated itself every time it has

been placed on trial, and it has been vindicated every time we have adopted any other policy.

The Philippine question is not so plain. Honest-minded and patriotic men have differences of opinion about it, and it is open to legitimate debate.

Nevertheless, the policy of the Republican party with respect to the acquisition, retention and government of our insular possessions, including the Philippines, is wise, patriotic and calculated to greatly promote the welfare and best interests of the people of the United States as well as the people of those possessions.

To have a correct understanding and appreciation of all this it is necessary that we should take a much broader view than is taken by the most of our critics.

We hear them talking about the Philippines as though they stood alone and had no relation to any other place or thing in which we are interested, and then, so viewing them, they calculate how much in money they have cost us, how much their commerce amounts to, and what profit is likely to accrue therefrom.

Most of such calculations are grossly exaggerated and misleading.

For instance, Judge Parker says that the Philippines have cost us \$650,000,000 in addition to the \$20,000,000 we paid Spain. Secretary Taft has corrected him to the extent of saying that the sum is not greater than \$250,000,000.

Both are wide of the truth, for the entire amount of all expenditures, in addition to what we paid to Spain, properly chargeable to the annexation of the Philippines does not amount to \$150,000,000, and for the last two years they have been practically self-supporting, and they no doubt will so continue. Their own revenues are sufficient to meet all their expenses of government,

and the maintenance of the few troops we have there costs no more than it would cost to maintain them here, for they are a part of the regular army which we are required by law to have, and are thus compelled to support anyhow.

If, therefore, the question of cost is to be considered, like everything else the Democratic party proposes, the suggestion is out of place.

Great national and international transactions are not measured by dollars and cents.

We have acquired Hawaii, but not to make money. We have acquired Porto Rico, but not for tribute. We have annexed Guam, but whoever thought of money for our Treasury from that source?

And finally we have undertaken the construction of the Panama canal, and expect to expend in that behalf two hundred or three hundred millions of dollars, but not one dollar of it for revenue.

We did not annex any of these possessions because we wanted to make money, or because we wanted more territory, or more people to govern, nor did we undertake the Panama canal with the idea of making money out of the tolls collected.

We were moved in all these matters by higher and better motives and purposes.

There has been an intelligent policy running through all these transactions that binds them all together into one harmonious whole of far greater value to the American people than many times the most extravagant estimate of cost any one has yet mentioned.

What we have been trying to do is not entirely new, for wise and sagacious American statesmen have heretofore entertained and expressed the same ideas in greater or less degree, but the work of carrying them

out did not commence to take practical form and to be executed until the Spanish-American War gave it a fresh impetus.

When we saw the Oregon compelled to double Cape Horn to reach the Atlantic side, when we needed her there, we at once resolved that there should be an Isthmian canal, and at once set about the work of preparing for it.

It has been a long, hard labor, but finally we got rid of the Clayton-Bulwer Treaty, and everything else that stood in the way, and have secured new treaties, and all new rights and additional legislation necessary, and are at last actually in possession and at work.

It will be an American canal, built by the American people, and paid for by them with American money.

No one yet knows exactly what it will cost, but the sum will probably be not less than two hundred, and may be as much as three hundred millions of dollars.

It would be unwise to embark in such an enterprise without not only getting all necessary and proper rights and concessions with respect thereto, but also taking at least all convenient steps essential to its proper protection.

Hence it was that, having resolved to build the canal, we came next to consider its defense.

Just at that time Hawaii renewed her application to be annexed. We granted her petition, not by treaty, for we could not get enough Democratic Senators to vote with us to make the two-thirds necessary to ratification, but by an act of legislation which required only a majority vote. If we were to build the canal, we needed Hawaii, not that we wanted more territory or more people, but because her position is such that, in our possession, and with a naval station established



there, we have an outpost that not only protects the Pacific end of the canal, but also our whole Pacific coast line as against hostile attacks from the Orient; and recent events have shown how important that is.

For the same reason we have been providing for the control of the Caribbean Sea and all approaches from the Atlantic by our military reservations and naval stations established in Cuba, and by the acquisition of Porto Rico.

It was for the same reason we sought to acquire the Danish Islands. Thus it has been our policy, as opportunities have offered, to put ourselves in a situation to not only build the Panama canal, but also to protect and defend it after it is built.

If the building of the canal be wise, then those other steps need no defense.

As to the wisdom of building the canal all agree; but why?

What are the purposes of the canal that it should command this unanimous support?

One is the national defense. That needs no elaboration. The Oregon incident is enough.

But there is another purpose not less important, although not so generally appreciated, and that is commercial.

We have reached the point in the development of our industries and the increase of our products, both agricultural and manufactured, where, after supplying our own markets, we have an enormous and increasing surplus that must be sold abroad.

This surplus amounts in round figures to more than a thousand millions of dollars annually.

We must consequently now study the question of markets more seriously than ever heretofore. This is

emphasized by the fact that Germany, France, Russia and all the leading commercial countries of Continental Europe have adopted the protective tariff policy, and England is likely to do so at an early day.

In view of all this we must look, not across the Atlantic, but across the Pacific, for the new and increased markets necessary to meet our wants.

It requires no prophet to foretell that in the Orient is to be the theatre of the world's greatest activity and greatest growth of industrial development for years to come.

The tremendous struggle between Russia and Japan grew out of the commercial rivalries that are impending.

All understand and appreciate, who are familiar with the situation, that the hundreds of millions of the Far East are comparatively only beginning to trade with the rest of the world.

Their commerce will rapidly grow from tens and hundreds of millions to thousands of millions.

No country will need her fair share of it more than the United States. That is all we want, but that we do want and must have; and it has been in recognition of this fact that John Hay has distinguished himself as one of the wisest and most successful diplomats who ever held the office of Secretary of State by securing and maintaining for us the policy of the open door. With that policy upheld and enforced, as it will be so long as the Republican party is in power, our commercial interests in that part of the world will continue to thrive; but the struggle will be a long and a hard one, and we will be faithless to our interests if we throw away at the beginning of it any legitimate advantages we may have.

Second in importance to the canal, if second at all in this connection, are the Philippines. Their possession not only gives us a prestige that would be destroyed if we were to abandon them, but also a base of operations that will enable us easily to protect great commercial interests in that part of the globe.

If we should abandon them and then be so unfortunate as to have war with any other power, our ships would be at once shut out of all neutral ports just as the Russian and Japanese ships are now shut out of all ports except their own, and as Dewey was shut out of every port in the Orient until he captured Manila Bay, and thus acquired a port in which he could stay and from which as a base of operations he could continue to protect the interests he was sent there to guard.

Aside, therefore, from all questions of duty towards the Filipinos and their country, and regardless of all treaty and international obligations, and regardless also of all expenditures of money that we have made or are likely to be called upon to make, and considering only our own interests and our duty to find markets for the toiling millions of American producers, we could not be guilty of a greater act of folly and stupidity than to elect Judge Parker President on his proposition to give the Philippines "political and territorial independence." That is the policy of "scuttle," pure and simple.

All such talk at this time is simply sentimental nonsense, if not something worse. We are there to stay, and no man should be entrusted with power who talks about anything else. This is not a time to turn backward, but to go forward.

The day is not far distant when the story of our work in the Philippines will be accounted one of the most brilliant and most creditable chapters in all our history,

both because of what it does for us and because of what we are doing for the Filipinos, who will be benefited in far greater degree than we can be. They are already beginning to understand and appreciate this fact, and to-day there is peace and prosperity in that archipelago far beyond anything its people have ever before experienced. If not already, in all probability they soon will be so attached to the United States that they would not have us abandon them if we would.

They know that the government we are giving them is more generous and less burdensome than they could give themselves or expect any other power to give them.

If there were no other question involved in this campaign, President Roosevelt should be elected, for his strenuous insistence on the policy we have been there pursuing is based on a broad and aggressive Americanism, and a wise and enlightened statesmanship that is adding to the honor and good name of the American people.

But in everything else he has done he has represented and advanced faithfully our best interests.

His most admirable and comprehensive letter of acceptance is a just and all-sufficient exposition of his record and his policies.

All know he is capable, patriotic and absolutely without fear, except only that he may not do his whole duty. His administration commenced under the most trying circumstances, but it has been full of honor, and is replete with great achievements. He has well earned the reward of a second term, and the American people will discredit themselves if they do not give it to him.

# SPEECH OF HON. J. B. FORAKER

DELIVERED AT

The Auditorium, Columbus, Ohio,  
*October 15, 1904.*

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Hon. Joseph B. Foraker, upon being introduced by the chairman of the meeting, said:

Mr. Chairman and Fellow-Citizens:—I need not say to you that this is a magnificent demonstration, for every man here is conscious of that. I will say to you, however, it is to me most gratifying indeed to have such an evidence as this of the fact that the Republicans of Ohio, shoulder to shoulder with the Republicans of every State in this Union, are marching in a solid and irresistible column to triumphant victory on the eighth of November next. (Applause.)

About every class of people I know in Franklin County are here represented. Here is the Glee Club—the same old Glee Club, only they have, as I observe, new clothes. (Laughter.) But they have something else. They have a rival in the singing business. The quintette that sang to us “The Old Coffee Kettle” are entitled to recognition along with the best singing clubs in the United States. (Laughter and applause.) Their voices are not so lusty,



their music may not be quite so good, but the words they uttered and the song they sang touch the heart as nothing else can touch it.

That reminds me that before I say anything else, I want to thank the old soldiers, who have charge of this meeting, for their splendid contribution to its success. (Applause.) I have had in my time all kinds of greetings; I have had in my time a good many different sorts of attention, but I am never so much affected or so much pleased as when the old comrades of 1861 and 1865 honor me by becoming an escort, as they did this evening. I am glad to see them here on the firing line in this great, magnificent national battle of politics, in this year 1904. I am glad to see that not alone on account of President Roosevelt, but I am glad to see it especially on account of your gallant candidate for Congress, E. L. Taylor, Jr. (Loud applause.) I came here more particularly that I might say a word for him. I am gratified to learn, by sitting here and listening to him, that he can speak for himself. (More applause.) I have known him all his life. I have known his father before him for many years. It is a great pleasure to me to bear witness here to-night that he is worthy to carry the banner of Republicanism as your candidate for Congress in this capital district. I have no words of unkindness or disparagement to speak of Judge Badger, his competitor. He is a very worthy kind of a man, a very agreeable man, just the kind of a man you ought to keep at home here where you can enjoy his society. (Laughter and applause.) I could not help thinking, when Mr. Taylor was telling you what a pleasure it would be to him to support the administration of Theodore Roosevelt, how impossible it is for Judge Badger to say any such thing as that. (Laughter.) We have not, my fellow-citizens, to be frank about it, any need for Democratic Congressmen down at Washington.

(Laughter.) President Roosevelt cannot lean on them. He cannot advise with them. They cannot help him, as the capital city of an Ohio Congressman should help him, to make his second administration the brilliant success that his first administration has been. Therefore, it is that I want to appeal to you here to-night not to forget on election day that you owe a duty to the national ticket, and also a duty to your candidate for Congress—(applause)—I want my old fellow comrades here and every other Republican in this county to rally as one man for his support, as well as for the support of the rest of the ticket. (Applause.) At the head of the county ticket is my old, long-time friend, Willis Bowland; don't forget him and don't forget anybody else on that ticket, but vote it straight, from Theodore Roosevelt down to the last man on it—national, State, county and city. It is a good year to take them all in.

I came here, my fellow-citizens, not simply to exhort you thus to vote, but to give you some reasons, if I can, why you should so vote. When we come to select a man for the Presidency, it is a most responsible and serious duty that we perform. They tell us that Judge Parker, the Democratic candidate, is an honorable, high-minded man. I haven't any doubt about it. I am not here to say anything in disparagement of him. I am not here to say anything unkind if I would, and I would not say anything unkind about him if I could. It is not necessary. We can dispose of him without that. (Laughter.) But I am here to talk to you in a frank, candid way about his qualifications for the Presidency, and contrast them with the qualifications of the man who now holds that high office. We want to know when we select a man for the Presidency that he has a good character, of course. But we want to know, also, what he thinks about public questions; what experience he has had in administering pub-

lic affairs, and thus it is that we make inquiries as to the public records of men.

Now I want to speak about the record of Judge Parker, not unkindly, as I said, for the truth is, I feel very kindly toward him. I may go further and say, I feel sorry for him. (Laughter.) He has had a hard time of it, and if my judgment is not in error, the worst has not yet come. (Laughter.) He got along very well so long as he kept his mouth shut. In that way he got the nomination at St. Louis, and then immediately afterwards he made his first public utterance, and he got along well with that; he got along well with it and helped himself very greatly by his celebrated telegram, but he thus helped himself, because in that telegram he announced good, sound Republican doctrine. (Applause.) "The gold standard had been irrevocably established." That is true. And when Judge Parker said that, and the Democratic convention agreed with him, one of the highest tributes was paid to the Republican party that has ever been expressed by any man. That is as far as he had any good luck in this campaign. Things then began to go wrong with him. People began to say things that were embarrassing about him. I might mention many, but I want to mention only two or three as illustrations. I have been absent from the State, speaking in other States, as you are aware, for the last three or four weeks. Immediately on my return to Ohio yesterday I made an effort to get into touch with what had been going on the meanwhile. In that behalf, I secured all the Enquirers I could get a hold of. I wanted to get into communication with the real, genuine gospel truth. (Applause and laughter.) And when I looked through the Enquirer of yesterday I found an account of a meeting held in Tomlinson Hall, Indianapolis, a few evenings ago, addressed by William Jennings Bryan. In that address Mr. Bryan said there

was a time when he had an idea that he was the Moses to lead the Democratic party out of the wilderness. Brother Poindexter could have told him better. (Laughter and applause.) For when Moses was about to be commissioned, and made remonstrance on the ground that he lacked speech, or the fluency of it, the Lord said, "I will be with thy mouth." Nobody ever accused the Lord of being with the mouth of William Jennings Bryan. (Applause.) And Mr. Bryan said further: "I do not appear, as I formerly thought I did, as the Moses, but I now appear as an Aaron, speaking for whom I call a Moses, Judge Alton B. Parker." So it is now, it is Moses Parker and Aaron Bryan. (Laughter.) Well, when I read that, I commenced to wonder what it all meant, for two names could hardly be selected so suggestive as the names Moses and Aaron. We are all familiar with their biblical history. I remember when I was a boy there was a rhyme—

"Then said Aaron to Moses,  
Let's cut off our noses,"

and I wondered whether Mr. Bryan had that in mind. For while it is true that the biblical account does not tell us whether the Aaron and the Moses of the Bible fell upon each other to cut off their noses, it can be truthfully written as a historical fact that Moses Parker and Aaron Bryan do seem to be trying to cut off each other's noses in this campaign, Judge Parker, by insisting, as in his telegram, that the gold standard has been irrevocably established, and Mr. Bryan, by insisting everywhere that the question of the gold standard is simply for this campaign in abeyance, and that he proposes to reform the Democratic party as soon as the next election is over and bring that, with other issues, to the front again.

But there is something else that I thought of that he

probably had in mind. As I remember biblical history—and Brother Poindexter can correct me if I am in error—Moses never got into the Promised Land. (Laughter.) He simply got up onto the mountain and was permitted to look over it.

But this is not all. Something else, perhaps, he had in mind. Aaron and Moses were brothers, but sometimes they had differences. You will remember on one occasion Moses was called up into Mount Sinai, and he was given the Stone Tablets on which the Commandments were written with the finger of God. He bore them down out of the mountain to communicate them to the Children of Israel, but what he did discover as he came down out of the mountain, as to the Children of Israel, whom he had left in charge of Aaron? He discovered that Aaron in the meanwhile had made a molten golden calf and was worshipping it. Moses was so excited and angry that he cast the tablets on the ground, and they were broken in pieces and destroyed.

Parker seems to be—for just now we don't hear anything more about him—up in the mountain, or up in the clouds, or up in a balloon somewhere, and he is up there, I imagine, to get the commandments, and he will get them from the American people on the eighth day of November. (Loud applause and laughter.) When he comes down out of the clouds, or the balloon, or the mountain, wherever he may be, instead of a smashing of the commandments on the stone, it will be as though the whole mountain had fallen on him. (Laughter.) He won't have time to observe whether Aaron Bryan is worshipping a silver calf or a golden calf. (Laughter.)

But that is not all the misfortune that Judge Parker has had.

Mr. Cleveland—ex-President Cleveland—saw fit to write



an article about him for The Saturday Evening Post; in it he eulogized him generally in the highest terms, but he reached the climax when he likened him to James Buchanan. (Laughter.) I think it was but natural, the likening of him by Mr. Cleveland to Buchanan. We remember Buchanan; all of us of my age remember him; all these old veterans remember him; all the men who sang about the old kettle can never forget him, and they remember what a halting, hesitating man he was; how he was constantly in trouble to find authority to do his sworn duty. You remember, my comrades, he could not find any authority in the Constitution of the United States to preserve the Constitution of the United States; he could not find any authority there to marshal troops and organize armies to coerce a rebelling State to remain in the Union, where God and the fathers had put it. If Judge Parker be like James Buchanan, then that is reason enough why the American people do not want him for President of the United States.

Well, now, my fellow-citizens, I am not going over the letters of acceptance that he wrote. You are familiar with them, at least in a general way. It is enough to say of them that his telegram was but an announcement of Republican doctrine, and it helped for that reason. Since then he has written simply as a Democrat; that is all. His views about the tariff are Democratic; his views on every other subject discussed are Democratic; there is nothing new in any of them, and I am not going to waste any time talking to you about them.

Against him, as our candidate for the Presidency, is Theodore Roosevelt. Judge Parker's record, his public utterances down to this moment, are confined to one telegram and two speeches. President Roosevelt, on the contrary, as you all know, has written and spoken voluminously,

not only on every current subject of American politics, but upon every question about which the American people have been concerned since the beginning of our government. When he wants to write a telegram it is no trouble to him. When Judge Parker wrote that telegram to that convention in June, I imagine he not only wrote it once, but that he wrote it a half dozen times before he got it to suit him; he had to think what will Bryan think? what will the gold wing of the party think? what will the silver wing think? what will this faction and that faction think? But when President Roosevelt writes, he simply writes and writes and writes, until he has said everything that comes into his mind on the subject, having nothing whatever in the way of views that he wants to keep from the American people.

I have known him pretty well for the last three or four years, and I take pleasure in saying here to-night that I have never known a man who apparently was so desirous that the American people should know his every thought and his every purpose. Nothing to conceal, nothing to keep back; and not only that, but we have never had a man in the White House more splendidly equipped than he is to deal with every question that arises. (Applause.)

Mr. Taylor says they tell us that he is dangerous. Well, that is true; he is dangerous—to Democrats (laughter) and rascals in office. They tell us that he is quick to reach a conclusion. That is true. It does not take him all day. If he sees a thing he is so constituted that he sees it quickly, and he generally gets ready and acts before our Democratic friends get done searching the Constitution to see whether or not he has power to act. (Applause.)

I have seen him in several emergencies. In the Panama matter, and in the matter alluded to by Mr. Taylor, the difficulty we had with the Sultan of Turkey, on account

of our missionaries in Armenia. I have seen him in other instances, too, when he was suddenly called upon to act upon some serious or important matter, but I have never seen him at a loss for one moment as to what to do (applause), and I have never seen him lack courage to do the right thing at the right time. (Applause)

They say that he is a war lord, that he carries a "big stick," and if we elect him President on the eighth of November he will involve this country in war. The best answer to that, my fellow-citizens, is the fact that he has been President of the United States now for three years, and he has not involved us in any war yet. On the contrary, I have had occasion to well know the fact—for the Committee on Foreign Relations of the Senate, on which I have the honor to serve, has had to do directly therewith—he has, during these three years, negotiated and sent to the Senate for ratification thirty treaties of peace, amity and commerce with other nations of the earth. (Applause.) He acts quickly, but although he acts quickly, our Democratic friends have been challenged to point out one thing he has done they would undo if they had an opportunity, and the one thing they have pointed out and specified, which Judge Parker is willing to pledge himself in advance to undo, is to revoke order No. 78, facilitating the granting of pensions to the old veterans. That is the only thing. I am not going to insult this intelligent and patriotic audience by stopping here to argue that under his administration we have not suffered in our prestige abroad, but that it has constantly increased. Neither have we suffered as to our prosperity at home, for that, too, has not only constantly, but most astoundingly increased. I have some figures here to which I want to call your attention in a very brief way; in a way that will not weary you, that show what amazing prosperity we have had under this administration. It is greater than we had under Harrison; greater than we had

under McKinley—the greatest in the history of this country, or in the history of any nation on the face of the earth. Under Mr. Cleveland's administration the annual treasury receipts amounted to 331 millions of dollars; under McKinley, to 459 millions; under Roosevelt to 750 millions. Under Cleveland we had in circulation of all kinds of money 1,592 millions of dollars; under McKinley, 1,859 millions; under Roosevelt, 2,264 millions. Under Cleveland our imports were 758 millions annually in value; under McKinley, 732 millions; under Roosevelt, 917 millions. Our exports under Cleveland were, in value, annually 856 millions; under McKinley, 1,251 millions; under Roosevelt, 1,430 millions. The balance of trade in our favor under the three years of President Roosevelt's administration has averaged 513 millions of dollars; that much the nations of the earth with which we trade have been required to pay, and have paid us and are paying us to-day at that rate—at this very minute—to settle the balance in our favor against them in our foreign commerce. Is it any wonder we have prosperity in this country? With 513 millions of dollars in gold, or its equivalent, pouring in upon this country from the other nations of the earth in a perfect flood, an amount greater than, almost, we can intelligently comprehend, we could not have anything else but prosperity, and we are having it, and we are having it not only here in Columbus, not only here in Ohio, but we are having it in every city, and in every State, and in every section throughout all this broad land; and we are having it, my Democratic friends, not only for Republicans, but we are having it for Democrats as well. Thus it has always been that the policies of the Republican party have greatly blessed our country; they have greatly blessed our government, as such, and our people as a whole, and all classes of people; people of all kinds of political faith, as well as the party that has inaugurated these policies.

What we want you to do when you go to the ballot-box on the eighth day of next November, is to remember that these policies are at stake as an issue in this campaign. Are you satisfied with the conditions that now obtain? If you are, do not vote to have a change. We tried that in 1892, and it wasn't very long afterwards until we commenced to regret it, and we regretted it four long years. We thought the prosperity we had under Benjamin Harrison was assured. We had Mr. Cleveland for President in 1884 to 1888, and there was no great panic, and we thought we would take him again, but we made the mistake of not taking into account that when he was elected in 1884, although we had a Democratic majority in the House, there was a Republican majority in the Senate that made it impossible for him to inaugurate any Democratic policies or measures. That was not the case in 1892, therefore the moment he went into office people took fright and we had the adversity that followed; we had the idleness that followed; we had all the miseries of that long experience. We have not forgotten that yet; we shall not forget it for a generation. As long as we remember it, I do not propose to weary you with any argument about the tariff, except only to just point back to that experience. When a man wants an argument out of me to show that it is better to produce in this country the article we need than to go and buy it from abroad, where it has been made by foreign labor, I won't argue it; I will simply point back to the second administration of Grover Cleveland. We tried that, you know with what result. As long as that can be remembered that is the only argument which it seems to me is necessary.

I want now to talk to you a little while about another subject. I am not uneasy about the tariff; I am not uneasy, for I know the American people appreciate the protective



policy, and they do not intend to put any man in office who would put that policy in jeopardy; therefore, I know they won't put Judge Parker in.

I am not uneasy, so far as that is concerned, about the Philippine question, but still I want to talk to you on that subject, in order that you may understand the patriotic purposes of the men in authority in acquiring the Philippines; in retaining control of them, and in governing them as we do.

Mr. Taylor well said to you that we did not commence that war to acquire territory. We had no thought of that. The war commenced about Cuba, but when it once commenced the bars were down, and the Philippines and every other possession of Spain were at stake. One of the first things that happened in that war was the incident of the Oregon. When we saw the Oregon compelled to sail around Cape Horn to get from the Pacific to the Atlantic coast, we made up our minds we would have an Isthmian canal, and as Mr. Taylor told you, we have now gotten possession of it, and are engaged in its construction. If you keep the Republican party in power long enough you will in due time have that great majestic enterprise completed. It will be an American enterprise, built with American money and directed by the American people. (Applause.)

That canal will cost us two or three hundred millions of dollars, and so when we entered upon that enterprise we resolved that we would not only build it, but that inasmuch as we were to make such a great investment we should take all natural and necessary steps for its proper protection. Therefore, it was that we began to think what we could do to ward off attack upon it in case we should be so unfortunate as to have war with anybody, and about that time little Hawaii, that had once thought she had become annexed, but had the flag hauled down on her by Grover Cleveland,

petitioned again for annexation to the United States. She found a different kind of a man in the White House; instead of Grover Cleveland, William McKinley was there (loud applause), and he had the faculty of comprehending the business interest and the business necessities of the country, and so when Hawaii came petitioning to be annexed she met with a cordial reception. A treaty was negotiated and sent to the Senate, but it failed of ratification because we could not get enough Democrats to join with us in voting for it to give the two-thirds vote necessary. Then it was, following Democratic precedent set in the annexation of Texas, we proceeded to annex Hawaii by Act of Congress, which required only a majority vote.

What for? Not that we wanted more territory to govern; not that we wanted to rule over more people; not that we wanted to make any money out of Hawaii, but because having determined to build that canal, seeing what a strategic position Hawaii occupied, we concluded that we would annex Hawaii and put there, as we are now proceeding to do, a great naval station. When that has been consummated, that work has been completed, it will be absolutely impossible for even a Japanese warship to approach our Pacific coast or the Pacific end of our canal. (Applause.)

All that happened while the Spanish-American war was in progress. When the Spaniard sued for peace—and that, you will remember, was pretty soon after he sued for war—the question arose what should be the terms of the treaty. It is customary for the conquering power to exact an indemnity from the conquered. We did not call upon Spain for one, because that would be futile. She had no money; she had no credit; she had no ships; she had nothing except only some real estate, but we happened to need some of that in our business, and Porto Rico was a part of it. What did we want with Porto Rico? Not that we might govern over

that little island; not that we might rule her people; not that we might exact tribute from her; not that we might get any money out of her, but simply that we might put ourselves in a situation with respect to the Atlantic end of that Panama canal, such as we had placed ourselves in by the annexation of Hawaii as to the Pacific end. We had it all buttoned up satisfactorily on the Pacific side and we wanted to do the same for the Atlantic side; so when we took Porto Rico, coupled with the Military Reservations and Naval Stations we have in Cuba, you will see by looking at the map, at a glance, that we control the Caribbean Sea almost as completely as Gibraltar dominates the Mediterranean Sea. That being true, that canal is safe at both ends, as everybody knows it is safe in the middle. (Applause.) It is safe all the way through; we have got it; we are building it; it is to be for the benefit of the American people, not only for national defense, but also for purposes of commerce.

Now, what about commerce? A great many people, perhaps some of these people here in Columbus, think this is simply some great question of statesmanship about which they are not immediately concerned. My fellow-citizens, that is a mistake. We retain the Philippines for the same reasons of a commercial character that we construct the Panama canal. Under these protective tariff policies that have been referred to here to-night, we have developed as no nation ever before developed in the history of the world. We have reached the place long ago foreseen by the advocates of a protective tariff policy, where we have so multiplied our industries and increased our production that we not only supply our own home markets, but we have a great surplus, amounting last year to more than a thousand millions in value, that we must find markets for abroad. Where will we find these markets? Our surplus is rapidly in-

creasing; the markets of Europe are not increasing in like proportion in their demands upon us. Over there, while our Democratic friends here are talking about free trade, their greatest statesmen are pointing to America as an example, and all are talking about a protective tariff. France, Germany and Russia have adopted it, and England, under the leadership of Mr. Chamberlain and Mr. Balfour, will do the same as soon as she can get around to that point, and she will not be very much longer about. In other words, my fellow-citizens, not across the Atlantic, but across the Pacific, we must look for the increased markets that are to take this rapidly increasing trade. Those markets are to be found in the Orient, in China and Japan, and Southern India, and the Straits Settlements. They have eight hundred, or perhaps a thousand millions of people who want to trade with us, and with whom we want to trade. We want to get our surplus over there. In that behalf we are not only building this Panama canal, but we are improving the Ohio river and all its tributaries. This great Ohio Valley is directly concerned, because when that canal is completed, as it soon will be, and when the Ohio river improvement is completed, we will have a great navigable river on which we can float our products down to the Gulf, and then through the canal, and we are closer to the markets of the Orient than any of our European competitors, and closer even than the Atlantic seaboard territory. That is the kind of policy we have been pursuing. But we not only want to get to the markets of the Orient; we want also to get into the markets of the Orient; therefore, we are interested in everything that concerns the question you have seen so much about in the papers, of an open door or a closed door. You will remember two or three years ago it was announced in the papers—and truthfully—that Russia and England and Germany and France—all of which

countries had made lodgments there—were about to close the door against the United States as to trade in those countries. Then it was that Mr. John Hay, one of the wisest diplomats who ever held the office of Secretary of State (applause), took his pen in hand and won for himself imperishable honor as the representative of this Government, by the negotiations that ensued. He wrote to those countries and told them we had this condition that I have been referring to, that it was quite necessary for us to retain our fair share of the foreign markets; that we wanted our fair, and only our fair share, and that we would regard it with displeasure if anybody undertook to close the door against us. Well, now, a few years ago a letter of that kind might have been pigeonholed, and an answer to it might have been delayed weeks or even months, but since George Dewey sailed into Manila and sunk that Spanish fleet, they don't treat Uncle Sam's letters in that way (applause), and hence there came back to us practically by the first mail answers from all of them: "Why, yes, certainly, to be sure; we are glad you let us know about it." (Laughter.) "It is all right; you should have an open door."

And now, my fellow-citizens, you are reading every day of this great, stupendous struggle between Russia and Japan, and the American people are keenly interested; lots of them know why; a good many do not know why, but all seem intuitively to know that Japan is making a fight that means that there shall be open doors and a fair chance as to the trade of the Orient for all the nations of the earth. They are not going to be shut out, and we are not going to be shut out. (Applause.)

Now that brings me to the Philippines. We have got them. Mr. Taylor told you how we got them. He told you how Admiral Dewey went down there and sunk the Spanish fleet and took possession of that harbor, and he



told you correctly. Let me add to what he said, that when the smoke of that battle cleared away, Admiral Dewey found himself in possession of exactly what the American people have always stood in need of in the Orient, a harbor where the American Navy can hang up its hat and stay over night without asking anybody's permission. (Renewed applause.) And that is something that we will never be without again, as long as we have sense enough to keep the Republican party in power. (Long, continued applause.)

Now, stop and think for a moment how important that is. That I may illustrate to you its importance, let me call your attention to the fact that, according to international law, when two nations go to war with each other, their belligerent ships are shut out at once from all the neutral ports of the earth. The ships of Japan, for instance, are not now allowed to go into the ports of any country on the face of the earth, except only in case of stress or necessity, and she has not seemed to have any "stress or necessity" or anything of that sort so far. (Laughter and cheering.) The ships of Russia are in like manner barred out, and she has had some necessities. She has gone with some of her ships into the ports of China, and with two of them she has come into our port at San Francisco, and immediately the question has been raised as to her right to have her ships go into that neutral port. It has been decided that she could stay there longer than 24 hours only because she was in such a state of distress, as to her ships, that it was inhuman to turn her out; but in all those cases, she has been required to dismantle her ships and disarm them before she would be allowed to remain.

Now that rule of international law applied to Commodore Dewey in the harbor of Hong Kong, when war was declared between Spain and the United States. He was there with our little squadron. That is a Brit-

ish port. According to international law he could not remain there longer than twenty-four hours. He must at once sail out and, as Mr. Taylor told you, become a derelict on the bosom of the sea or else return to his nearest home port, at San Francisco, six thousand miles away from the place where he was needed and where McKinley did not want him; where Dewey did not want to go; where he could not help us in the impending struggle. That was the situation. Why did he have to do thus? Simply because we had no port in all the Orient, where we had a right to stay, in time of war, a war in which we were engaged. We did not want him to come back to San Francisco. We did not want him to be sailing around over the bosom of the sea without anything particular to do, and so President McKinley sent him to the Phillipines and told him to capture or destroy the Spanish fleet, and Dewey did both. (More applause.) When he reported back what he had done, our Democratic friends say he ought to have come away. They say it was all right to go there; it was all right, inasmuch as we had war with the Spaniards, to sink their ships and to kill their sailors, but when the battle was over and the victory was won, he ought immediately "up with his anchor and away."

Well, my fellow-citizens, have you ever stopped to think where he would have gone if he had sailed away? He could not go back to Hong Kong. War was still continuing. He was still barred out of that port. He was still barred out of every port in the Orient except only the one he had captured, and he either had to stay there or go back to San Francisco, where nobody wanted him. In that emergency President McKinley told him to stay just where he was and to get acquainted with the folks. (Laughter and applause.) And to take

care of our interests there, and thus he remained there until the war ended. Then the question arose whether we should take the Phillipines as we had taken Porto Rico. Well, there were a good many considerations which moved us to take the Phillipines. We did not do it, however, from lust of power, or a spirit of greed, or to acquire more territory. We did not do it from any improper reason. After the most careful consideration that it was possible to give the subject, the conclusion was reached that we should take the Phillipines for a number of reasons. I am not going to dwell here to-night upon the humanitarian side of it. It is not necessary. Others have spoken about that. That was enough of itself. It was an act of humanity. We could not, under the existing circumstances, be guilty of an act of such inhumanity as deserting the Phillipines at such a critical time would amount to.

But there were other reasons. We had determined to build this canal. We were looking forward to the time when the canal would be completed; when American commerce would pass through it, by millions of tons, going to the Orient. We were looking forward to the time, therefore, when we would be knocking at the doors of the Orient to enter and to trade with the hundreds of millions of people in the Orient. So we said, now we never had a port here before. The fortunes of war have brought us one, and in the wisdom of the statesmanship of the Republican party, with William McKinley at the head of it, we determined that we would keep it. I look back with a great deal of satisfaction to the fact that I never had any hesitation whatever on the point that it was our duty to keep it—our duty, not to our Government merely as such, but to the millions of men who are toiling in this country on the

farms and in the work shops bringing forth this surplus product that I have been talking to you about. It was our duty to keep them, in order that we might have a base of operations there, so that if anybody undertook to shut the door in our face, we could immediately proceed to kick the door down. (More applause.) It has already had just that effect. As I said to you awhile ago, when it was threatened to close the door, it was not necessary for us to flourish a big stick in order to open the door. It was only necessary to use some soft words, but they were words of seriousness. They were words of meaning. They were words spoken by the representative of one of the greatest peoples on the face of the earth, this great American people, eighty millions strong, a nation that had shown itself to have as good fighting qualities as any nation on the face of the earth. (Long, continued applause.) They knew there was an administration in power at Washington which would not permit this people to be deprived of its rightful share of the markets of the earth. Therefore they yielded to that demand, and now, how many things have occurred? We have enhanced our influence, our prestige, our power in the Orient.

Mr. Taylor alluded to the Boxers, and that brought to my mind a story which every American should be proud of, Democrats and Republicans alike. When the Boxers broke loose, when they shut in the representatives of other nations in Peking and threatened them with extermination, when they cut off their communications with us, the nations of the earth concluded that they would send troops to relieve them. The English, the Russians, the Japanese, the French, all sent their troops there, and we sent ours. And it did not

take us long to get them there. We took them out of the Philippines, only six hundred miles away, and got them over to China almost before our Democratic friends got done looking through the Constitution to ascertain whether or not there was authority in the Constitution for any such proceeding. (Great laughter and long continued applause.) A splendid little army! Five thousand infantry, cavalry and artillery, commanded by a splendid Ohio soldier, General Chaffee. (Applause.) He is the real thing. He commenced in the Civil War as an enlisted man in the Union Army and fought his way up until to-day he is a lieutenant-general at the head of the United States Army. Well, he went over there to take command of that little army. A council of war was called. The generals commanding all these different detachments were present. They were unanimously of the opinion, and so expressed themselves, that the ministers were perhaps all dead anyhow, it had been so long since they had heard anything from them; that the roads were very bad between Tin Sing and Peking, and that the Boxers were numerous, and that their respective detachments were not in a proper state of preparedness, and therefore it was the part of wisdom to delay for a time the advance of these different detachments upon Peking. When they were all done, General Chaffee was asked for his opinion. He modestly explained his regret that he was unable to agree with them, saying that he was there under peremptory orders from President McKinley to take command of that little army and to start immediately for Peking, and that he proposed to start the next morning at 5 o'clock. (Long, continued applause.) He further stated that he would like to have their company, but if they could not go along, he would go anyhow. (Re-



newed cheering and applause.) And the next morning at 4 o'clock the reveille was sounded and "the old coffee kettle was thrown on the pole" and the boys in blue got their breakfast, strapped on their knapsacks, shouldered their muskets, fell into line, and with Old Glory floating over them wheeled out into the road and started for the capital of the Celestial Empire. (More applause and cheering.) And to the great satisfaction of everybody, it was discovered that every one of the commanders of these other detachments had, during the night, for some reason or other, changed his mind, and they all went along with us. (Renewed laughter and applause.) General Chaffee, with our column, led the advance, and the ministers were rescued. and great honor and dignity were added to the American name and great renown and glory to the old flag and to the American soldiers. (Prolonged applause.)

My fellow-citizens, that little incident, following after what had happened at Manila, advanced the American name and the American influence until now we have an influence beyond anything anybody ever expected us to have in all that Oriental country. They know we have the Phillipines. They know we are a determined and resolute people. They know we have suppressed an insurrection there. They know we have established civil government. They know it is a success. There is no municipality in that archipelago that has not the same kind of a civil government that you have here in Columbus, in principle and in name, and no municipality in it where the Filipinos are not participating in that government. And they know something else to the credit of the American people. We have not been idle. We have not suppressed that rebellion and established civil government alone, but we have established educational facilities.

We have to-night in the Philippines over two thousand American school houses scattered throughout that archipeligo at proper and convenient places; over each of them a little American flag and inside of each of them a little American school teacher (applause), surrounded by a crowd of Filipino children hungering and thirsting for education and knowledge, and especially knowledge about the United States and the free institutions of this great country of ours. I was talking with one of those teachers a few weeks ago who had just returned. She was telling me her experiences. She said the only trouble they had with those children was to get them to go home when school let out. (Laughter and applause.) Not only that, but we have found it necessary to establish a great normal university in Manila, where we are educating Filipinos to be school teachers and to send them out to give instructions. Not only that, but we have had to organize and conduct night schools in order to answer their demands for education. Not only that, but at all of the army posts where there are no school houses and no American or Philippine teachers, our officers are detailing enlisted men from the ranks, who are acting as school teachers. There is not a spot, my fellow-citizens, on the face of the earth to-day where there is such hungering and thirsting after knowledge and education as there is under the American flag in the Philippine Archipeligo. (Great applause.) It is one of the grandest chapters that the American people have written in all their history. My fellow-Democrat, don't you wish you had something to do with it? (Great laughter and applause.)

Suppose now that Judge Parker should be elected? It is unsupposeable, of course; but suppose that such a thing should happen and he would undertake to carry

out his policy, as he is pledged, to abandon the Philippines (that is what it amounts to), what would be the result? He would have to send somebody over I suppose to communicate the intelligence in an official way. We can imagine the Minister Paramount (we will call him that for want of a better name) going to represent the Democratic administration in the Philippines, to execute its policy there. I do not know where they would get him. I do not know a self-respecting Democrat in all the United States who would be willing to undertake it; but I expect they would find somebody; they always do. He would go over there, and it might not be much trouble for him to order the army home or order the navy back into the American waters, but just think how he would feel marching up in front of one of those little school houses, tapping on the door, the teacher coming out and saying, "What is wanted?" "Why, I have come to tell you that Parker is elected; that Roosevelt has been defeated, and we have concluded to change the American policy. We are not going to keep the Philippines any longer, and I am here to tell you to dismiss school; send the children home; let them take their books with them. They won't need them any more. The Democratic party are not going to keep up these educational facilities and advantages. Haul down the flag, pack your grip, get on a transport and sail out for the United States as soon as you can." What a spectacle that would be! My fellow-citizens, do you think that would advance our prestige in the Orient? Do you think, after an act of that character, any nation on the face of the earth would hesitate to slam the door of trade in our face if she saw fit to do it? Do you think England would hesitate? Do you think France would hesitate or Russia or Germany

would hesitate? Every man knows to the contrary. Every man knows that that would be to destroy all we have accomplished and established. Now, that would be bad enough simply so far as it affected our good American name, but it would be absolutely inexcusable and indefensible in its effect upon the men who work in the shops and the mills of Franklin county and on the farms of the State of Ohio and the rest of the United States. For the result of it would be to surrender and sacrifice at one stroke all our advantages with respect to trade in that great theater of coming activity and opportunity. It would mean cutting down the pay-rolls, lessening the production, and a general cramping of business conditions here in the United States.

My fellow-citizens, one of the questions presented in this campaign is, as I have undertaken to indicate to you, of men. I am not speaking about their personal or moral character, but their qualifications for this high office of President. We want a man there who is equipped; who is ready for any emergency; who thinks quickly, perhaps, but always thinks correctly. We want a man there who represents the great principles of the Republican party; who is carrying out, and will continue to carry out, the patriotic and successful policies the American people have inaugurated and established through and by the Republican party. We want a man there who not only stands for the continuation of our prosperity at home, but a man who stands for the maintenance of all the advantages we have acquired abroad. A man who will not sacrifice what we have gained; what we have struggled for; what we have triumphed in securing and what every American ought to be proud of.

Now we are nearing the end. I am not going to

weary you with any longer talk. I am going to simply close with a word of congratulation. It has been my fortune in this campaign to travel about a good deal over the country. I have been in some ten or twelve of the other States of the Union, where it was thought possible it might be necessary to make some effort to win a victory on the eighth of November for Theodore Roosevelt. I come back to-night to Ohio to engage for the rest of this campaign here in our own State. I take pleasure in bringing you, as the result of all my observations, the report that wherever I have been there is the same magnificent, intense spirit and determination to triumph for Republicanism and Roosevelt in November, that you manifest here. I have been in Indiana and in West Virginia. I have also been in New York. Our Democratic friends are talking about carrying those States. I say to you here to-night, and you have only to live to the eighth day of November to see the prediction verified, that those States are as absolutely certain to give their electoral votes for Theodore Roosevelt as is the State of Ohio.

You are engaged in a great work, a good work, not only for yourselves here in Columbus, and ourselves throughout the State of Ohio, but for the whole American people, from ocean to ocean. I congratulate you that you are engaged in it with such promise of success, and I thank you on behalf of the Republicans everywhere for such loyal and such inspiring support as you are manifesting and giving here to-night.







SPEECH OF  
HON. J. B. FORAKER

AT THE

Music Hall, Cincinnati, Ohio,

*Saturday Night, October 29, 1904.*

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When Senator Fairbanks concluded, Chairman Gordon said:

Ohio has had many great men. She has given many men to this country who have led in the great battles that have been fought for the cause of Republicanism, but in the history of this great State, in the history of this great party, she has never given to the Republic a man who has done greater service than our own fellow-townsmen, the Senior Senator from this State, Senator Foraker, who will now address you. (Applause.)

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Mr. Chairman, Ladies and Gentlemen:

At this late hour, and following such an address as we have listened to this evening, I shall not undertake to make to you any formal speech. I shall just talk to you for a little while; and I want to talk, in the first place, about Senator Fairbanks. (Applause.) He

seemed to have a sort of grudge of some kind against me. (Laughter.) I judge so from the fact that he located all the heroes of his stories in Ohio, and some of them in my own native county. (Laughter.) Well, I am not going to repay him in kind. I want to say that in this campaign, now so rapidly drawing to a close, while many men have done efficient work, no man on the stump has rendered service to his party and to our cause comparable with that which Senator Fairbanks has rendered. (Applause.) He has literally spoken from one end of this country to the other, and back again. (Laughter.) From Maine to California, throughout all the great Western States, making hundreds of speeches, and not one single sentence has he uttered that any Democrat has been able to criticise. (Applause.) No man, a candidate for high office in this country, has ever borne himself more nobly, more grandly than he, and it is a great satisfaction to know that the services he has thus rendered are so highly appreciated as this audience indicates they are in this patriotic Republican city of Cincinnati. He will have his reward on the 8th day of next November. (Applause, and cries of "Good!")

I could not help thinking, as I sat here on this platform and listened to his thrilling story of Republican achievements and saw this magnificent audience he was addressing, how grand a thing it is to be a member of the Republican party. (Applause.)

I heard a friend of mine tell a story to-day that seems to me to fit in here very well. He said there were a German, an Englishman and an Irishman together, and in the course of their conversation the Englishman inquired of the German, "What, if you were not a Ger-

man, would you rather be?" And the German said, if he were not a German, he would rather be an Englishman; and then the German asked the Englishman the same question, and the Englishman answered, that if he were not an Englishman he would be a German. And then they turned to the Irishman and said, "Pat, if you were not an Irishman, what would you rather be?" Pat scratched his head and thought a moment, and then said: "If I were not an Irishman, I would be ashamed." (Prolonged applause.) And so it seems to me that every American citizen who has been free to make his choice of party affiliation should, in the presence of the magnificent record that has been so thrillingly recounted here this evening, be ashamed if he is not a Republican. (Applause.) Senator Fairbanks has not exaggerated what the Republican party has done for this country during the last seven years. He has told you in fitting terms of the poverty and the distress and the idleness that prevailed in this country under the administration of Mr. Cleveland. He has also told you in glowing language of the prosperity that has prevailed since the inauguration of Wm. McKinley. (Applause.) You know not only that he has not exaggerated it, but that it is impossible for any human language to exaggerate it. You know we have not only had an unprecedented prosperity, but you know that it has been a prosperity for every State in this Union, for every section of this broad land, North, South, East and West; a prosperity, as Senator Fairbanks has said, for the Democrats as well as the Republicans—for every class of people. And yet, notwithstanding this fact, I find in the newspapers of this morning a speech reported to have been made yesterday by Judge



Parker at his home at Esopus, in which he says, speaking to a delegation of farmers—from Wall Street (laughter), that the farmers of this country have suffered on account of the tariff. I would read it to you, but I have General Shattuc's glasses, and I fear he is too old for me. (Laughter.) Possibly I can read it. If so, I will. Yes, I can. This language cannot be improved upon: "The farmers suffered even more, possibly, than the wage earner, by excessive tariff duties." Then he proceeds to tell those farmers how we are compelled to pay \$9.00 a ton more for steel rails than they are sold for abroad. (Applause.) I will leave that part of his speech to the railroads, who use steel rails and are not an object of solicitude, because able to take care of themselves.

But, my fellow-citizens, let us stop and think for a moment about what he says about the farmers. Have the farmers of this country been suffering during the last seven years? (Cries of "No!") Only this afternoon in Xenia, Ohio, I spoke in an Opera House filled with farmers, and from their general appearance they might have been mistaken for so many bank presidents. (Applause.) I did not see one of them who was not clad in becoming clothing, who did not look happy, who did not look prosperous, who did not seem to know that "The frost was on the pumpkin and the corn was in the shock." (Applause.) Senator Fairbanks well remembers how the Dingley Law was framed, and if you never read it, I would be glad if you would read it, in view of this statement of Judge Parker. You will find that the framers of that Dingley Law did not forget any interest or any industry in this broad land, least of all the farmer, who is protected by it as to every

product he brings forth. There is a tariff on corn, and on wheat, and on everything else, from corn and wheat down to butter and eggs; and the result is that the farmers of this country were never so prosperous as they are to-day, because they not only have our tremendous home markets that have been built up under the Dingley Law, but they have those home markets all to themselves. No Canadian eggs, or Canadian butter, or rye, or oats, or barley, or wheat can come into this country until they walk up to the Captain's office and settle with Uncle Sam. (Applause.) If the farmers who waited on Farmer Parker yesterday (laughter) could only travel about through Ohio and other States of this Union, as I have been doing during this campaign, they could not help finding out the fact that there is not an acre of farm land in all this whole country, from ocean to ocean, that is not worth to-day at least fifty per cent. more than it was when McKinley was elected. (Applause.) There never was a time in the history of this country when the farmer owed so few mortgages as he owes to-day. There never was a time when he had as much money as he has to-day with which to buy all the land that next adjoins him. (Applause.) And as it is with the farmer, so it is with every industry in this broad land. Why? Think of the figures that have been named; think of the aggregate of the balances of trade in favor of this country in the last seven years; amounting to the incomprehensible sum, for such it is, of three thousand, six hundred millions of dollars. No wonder we have prosperity.

And now, my fellow-citizens, I want to tell you another story illustrating what I have in mind. These stories do not originate with me. I hear them as I

go about, and then I borrow them from the people who tell them. (Laughter.) This story is also about an Irishman, who had just landed in this country. He had never seen a train of cars go through a tunnel. It was his fortune to be standing with a friend near a tunnel that he had come to, as he was travelling, when a lightning express came down the track; it came thundering along, whizzed by them, and shot into the tunnel and disappeared out of sight. His friend said to him: "Well, Pat, what do think of that?" He thought a moment and said: "Well, I was thinking what a hell of a smash-up there would have been if that train had missed that hole." (Laughter and applause.)

My fellow-citizens, we had the same kind of prosperity in 1892 that we have now, but, as Senator Fairbanks has told you, we missed the hole that year. We flew the track, and did not get through the tunnel, and there was a smash-up that we did not recover from until four years later, when we stuck to the track, and went through on the lightning express (applause); but, as it was in 1892, so, too, will it be again in 1904, if we should make the mistake of turning the Republican party out of power and putting the Democratic party in, and, therefore, it is that the people of this country, without making any great demonstration about it, for it is true there has been no great excitement in this campaign, are yet nevertheless of one mind, and that is that on the 8th day of next November they will vote approbation for Republican policies and a continuance in office of Theodore Roosevelt. (Applause.) But they tell us that Mr. Roosevelt is a dangerous man. (Laughter.) There is some truth in that. He is dangerous to Democrats (laughter) and he is dangerous to rascals whom he

may chance to find in office. (Applause.) But, my fellow-citizens, I think I am pretty well acquainted with him. I have been compelled to know him pretty well. As your representative, it has been necessary I should see a great deal of him. As a result of it, I can say to you in all good conscience that there never was in the White House a better equipped man for the Presidency, nor did there ever sit there a man more ready to listen to reason before deciding a question. (Applause.) I need not tell you he is a fearless man. You know he is. Every man knows he is not afraid of any human being on the earth, from a trust magnate down to a walking delegate. (Applause.) To each and every man, high or low, white or black, rich or poor, he will mete out exactly what he is entitled to under the law—nothing more, nothing less. (Applause.) The only fear I have ever known him to show has been the fear that, possibly, under some circumstances, he might not be able to do his whole, full duty in the administration of his office. That is all. He is pretty quick to reach conclusions, but he has not made any mistakes. Our Democratic friends have not yet been able to point out one. He does not waste any time putting his ear to the ground to find out which way public sentiment is moving. He spends his time investigating subjects that arise, and he is quick as a flash to see the right, and just as quick to do the right thing. (Applause.) He generally has it done before our Democratic friends finish going through the Constitution, searching to find out what authority he has. (Applause.)

Senator Fairbanks has alluded to the Panama Canal, and his recognition of the Panama Republic. Let me add just a word to what he has said. We had an agree-

ment with Colombia first under a protocol, that she should have seven millions of dollars for the concessional rights we asked for, but when we came to make the treaty, after we decided in favor of the Panama route, they insisted that they must have ten millions; and rather than be balked about the matter, and desiring to be generous, as well as just, we acceded to their demand, and agreed to give them ten millions of dollars, and to give them practically everything else they had asked for, and after we had ratified that treaty and sent it down to them, they dilly-dallied with it for some months, and then announced that it was rejected, and that, too, without any consideration whatever; and the only communication we had on the subject was an unofficial one given out to a newspaper in the city of New York, by a citizen of Colombia, who had evidently gone there for that purpose, according to which we were told that they would ratify the treaty if we raised the sum to twenty-five millions. That went beyond the limit. Uncle Sam is rich. He is generous. He always wants to be generous. He is generally willing to pay more than a thing is worth, if there is a decent demand made; but he is not going to be stood up by anybody on the face of the earth, and especially not by anybody from South America. (Applause.) For that people, of all others, should be just in their dealings with us. And so it was we commenced to turn our attention again to the Nicaraguan route, and when little Panama, the one great sufferer, saw that, she ceded and established an independent government, The Republic of Panama. She proclaimed it to the world, and three days afterward Theodore Roosevelt recognized it. Why he took three days, I do not understand. (Laughter.) Our Demo-



cratic friends claim he was in haste. He was not. When the Republic of France was proclaimed, we recognized it the very next day. When the Republic of Spain was proclaimed some years ago, we recognized it the very same day. When the Emperor Dom Pedro was overthrown in Brazil and a republican government established, we forthwith recognized that, and so it was that Theodore Roosevelt had abundant precedent for a speedy recognition. But, as has been told you, there was an emergency in this case. Since 1846 we have been under treaty obligations to preserve peace and order on the Isthmus of Panama at the transit. This secession was calculated to precipitate war. Colombia commenced marshaling her army. She assembled four hundred men and eighty-seven colonels. (Laughter.) They commenced threatening all kinds of dire doings. Among other things, they were going to kill some Americans, and destroy some American property, and they were going to fight the Panamans on the transit. It was in that emergency, to obey and discharge the obligations of our treaty, that President Roosevelt ordered from the Nashville the marines to be landed, and they landed—24 of them. (Laughter.) That was enough, because they carried the American flag with them. (Applause.) They represented the power and the authority of this great Republic, the United States of America. Later thirty or forty more were landed, and they gave it out as the order of President Roosevelt that they were there not to make war on anybody, but only to protect American rights and property, and to preserve peace and law and order on that transit, and, therefore, if the Colombians wanted to fight they were welcome to; that was none of our business, but they must find some other

place than that particular spot to do their fighting. (Applause.) They were told that if they wanted to fight to go off in the woods. (Laughter.) That settled it, for if a South American can't fight within reach of the telegraph, so it can be easily reported, he does not want to fight at all (laughter); and so it was that we acted throughout, as well as in recognizing the Republic of Panama, in discharge of our treaty obligations. Our Democratic friends, in the debates in the Senate and House, sought in vain to find a weak spot in all the record that had been made. As a result of it all, we now have that canal. We are in possession of it. We are engaged in constructing it, and, as I have said elsewhere, my Democratic friends, although you stood out in opposition until now, we are going to give you an opportunity to take part in the glorious work. We are going to let you help us dig it. (Laughter.) That is something you are well qualified for. (Laughter.) When we get it constructed it will be an American canal, paid for with American money, controlled by the United States of America, but we will allow all the nations of the earth to use it for peaceful purposes, on such terms and on the payment of such tolls as we see fit to prescribe. (Applause.)

My fellow-citizens, let me pass from that, for it naturally follows, to something else.

You have heard a good deal said recently, and I have noticed that a good deal of it has been said in Cincinnati, about what they call the spirit of imperialism. We are charged with having had a spirit of imperialism at the basis of the acquisition of the Philippines, Porto Rico and Hawaii. Let me say to you, no such spirit entered into these acquisitions. I think I know as much

as any other man of just how these islands came to be annexed. We resolved to build that canal. We resolved to build that when we saw the Oregon sailing around Cape Horn, trying to reach our fleet in Cuban waters. She happened to be on the one side, and we wanted her on the other. Weeks passed—of suspense and anxiety, as the Oregon sailed around the Horn, and you will remember in what a state of uneasiness we were for fear that the whole Spanish fleet, knowing that the Oregon was coming, would take advantage of the situation, meet her somewhere down on the South American coast and fight her, she being single-handed, and destroy her. We were a good deal relieved when Capt. Clark told us, upon his arrival, that the anxiety he had all the while was that the Spanish fleet might not fall in with him. (Applause.) We did not know as much about the American navy then as we know about it now. But when we saw the Oregon thus sailing thousands of miles, President McKinley and those associated with him resolved that, come what might, we would proceed immediately to construct that Isthmian canal. What we have done has been in pursuance of that resolution. But intending to make it really an American outpost, intending to expend and invest possibly three hundred millions of dollars in it, knowing it would take probably that sum, we naturally thought that it was wise statesmanship to take every step that we might be able conveniently to take to provide for its defense. Just then Hawaii came again, petitioning the United States to annex her. She had been annexed once before. Our flag was up there, but before the treaty of annexation was ratified, Grover Cleveland came in and hauled it down. He will never haul the

flag down again. (Applause.) When Hawaii thus presented her petition to us, we acted favorably upon it, not that we wanted more territory to govern, nor that we wanted to rule over more people, but because we wanted to promote the welfare and provide for the common defense of the American people. We took the map and looked at it. There was Hawaii, a veritable outpost of the United States, situated, as it was, 2,100 miles from San Francisco, out in the Pacific Ocean; not another island to the north of her until you come to the Aleutian Islands, which we already owned; not another island to the south of her until you cross the equator and sail into the far-distant southern seas; and not another to the west until you come to the Orient. With Hawaii in our possession, and with a great naval station there, it will be impossible for any hostile ship of war to approach that canal or to approach our Pacific coast from the Orient; not even a Japanese warship could get by. (Applause.) With Hawaii in our possession, the defense of that end of the canal was provided for. Then the war ended, and we concluded we would take Porto Rico. Again, I say, we did not want more territory. We did not want to govern that people. We took them because we wanted to do for the Atlantic end of that canal just what we had done for the Pacific end. We took it, because, with Porto Rico in our possession, and with the naval and military stations we have reserved in Cuba, we command the Caribbean sea as completely as Hawaii does the Pacific end. We could not get our Democratic friends to join with us in this work, but we did not expect them to. We knew from the outset that it would be impossible for them to appreciate a great, wise policy of American statesman-

ship such as I have described. (Applause.) Then we came to the Philippines. We naturally wanted Porto Rico and Hawaii, but when we came to determine the conditions of peace we concluded we would take the Philippines also. There was a humanitarian side about it which I will not stop to discuss. We did not act hastily. We investigated thoroughly and acted deliberately. One great controlling thought, one that the people here in Cincinnati are directly interested in, was our future commercial necessities. We want to see the improvement of the Ohio river carried on to a speedy completion (applause), so that the ten millions of people living in the Ohio Valley may be able to float their surplus products on the bosom of the Ohio, down the Mississippi river, across the Gulf, into and through the canal, and thus make us nearer to the Orient than any of our European competitors. (Applause.) We looked ahead far enough to realize that we not only want to go to the Orient with our products, but that when we get there we will want to get into the Oriental markets. We did not want anybody to close the door against Uncle Sam; and we don't intend anybody shall. (Applause.) But if we should stand idly by they would be closed against us. You will remember that only two or three years ago Russia, France, Germany and England, having made lodgments and taken control of certain spheres of territory in China, according to common report, and that report was based on fact, seemed to contemplate the partitioning of China and the appropriation of it to themselves. That would have closed the door against us as to trade in the Orient. In that emergency, John Hay (long applause)—I am glad to know from that demonstration that you properly appre-



ciate him. (Applause.) He is one of the wisest, most patriotic and diplomatic of all the Secretaries of State who have ever held that great office (applause)—took his pen in hand, at the crucial moment, and addressed these several Powers a circular note, telling them in effect of the tremendous prosperity we have here, of our necessity to look out for our share of these increased and additional markets and our desire to trade in them, and concluded by saying that if they undertook to close the door against us we would regard it with extreme displeasure. (Applause.) That is all. A note like that sent to these great Powers ten years ago might have been answered in the course of six or eight weeks or months, but in all probability, when the answer came, it would have been evasive—but since George Dewey sailed into Manila harbor (applause) nobody treats the communications of the United States in that way. (Applause.) And so it was that by early mail there came back prompt and satisfactory answers from every one of them. The effect of them was: “Why, yes, certainly, to be sure; glad you let us know about it.” (Laughter and applause.)

The last thing Russia did before she got so busy she could not think of anything else except the business on hand, was to designate two ports of entry that should forever be open to American commerce. (Applause.)

Well, my fellow-citizens, we had all that in view when we took from Spain a cession of the Philippines. We did not take them to make money. We had no thought of levying tribute upon them. We had no lust for power in the matter. We had no greed for land; no improper spirit, but only regard for the mil-

lions of this country, toiling in the shops and the factories of such cities as Cincinnati, and the millions who live on our farms. We felt that we owed it as a duty to the American people to preserve for them their fair share of these great growing markets of the world. (Applause.)

How do the Philippines become important in this matter? some one asks. I will tell you, and I cannot tell you better than to recall history. When the Spanish-American war commenced, international law went into operation, and according to it our ships, being belligerents, were no longer allowed the courtesy of any neutral port. We had a little squadron over there, not a very big one, but it turned out to be big enough. (Applause.) It was in the harbor of Hong Kong, under British jurisdiction. It could not remain there longer than twenty-four hours. Under international law it would be an act of hostility for England to allow it to remain longer. Where was it to go? Our nearest port was San Francisco. There was no war there. That squadron was not needed there. We had sent it to Hong Kong because we needed it there in time of peace—much more was it needed there in time of war. To send it to San Francisco was simply to put it out of commission in time of war, when it was needed. And so President McKinley cabled to Dewey, telling him war had been declared; that within twenty-four hours he must quit that port; that he did not want him at San Francisco, and he did want him some place else; and so he told him to go down to the Philippines and find that Spanish fleet and capture or destroy it. Dewey went, and did both. (Applause and laughter.)

When the smoke of that battle cleared away he

found himself in possession of one of the most magnificent harbors in all that part of the earth; something we had been without but in need of since the beginning of our government; but something we will never be without again, unless we shall be guilty of the grossest stupidity. (Applause.) At last we had a place where an American warship could stay over night in time of war without asking anybody's permission. (Laughter and applause.) We had a place that was exactly fitted to be a base of operations for the protection of American commerce and American citizens and interests in the Orient. Take the map and locate the Philippines. Call in your Democratic friend. Show it to him. Explain to him what a map is. (Laughter.) He will appreciate it. (Laughter.) He can see, as you will, how the Philippines are located—in the very front door yard, as it were, of all that tremendous population to be found in China, Corea, Manchuria, the Straits Settlements, Oceanica and Southern India. He will appreciate, as well as you, how, with the Philippines in our possession, we can keep a naval station there and be convenient to the place, if necessity require it, where a navy could be made use of. In other words, so long as we maintain the prestige we now have, and maintain the advantage we have, there will be no closing of the door against us. (Applause.)

My fellow-citizens, our Democratic friends appreciate that Dewey did right to go there. That it was all right up to the point of capture, but they tell us he should have come away immediately. (Laughter.)

To begin with, he did not go there to come away. He went there not only from duty but because of necessity, and if he had come away there was no place to go to

except San Francisco. So President McKinley told him to just to stay there and get acquainted with the folks. (Applause.)

We did not know much about them at that time. We had no thought of the Philippines when that war commenced. I doubt if there were twenty men in both Houses of Congress who could have told you where the Philippines were located. (Laughter.) But we soon found out.

And now what is it we have been doing there? Judge Parker has been talking on that subject, too. He says we have sacrificed 200,000 lives there. Every man and every officer sent to the Philippines from the beginning until now make an aggregate of less than 124,000. So that if we had lost every man and officer we have sent he would still be 75,000 too high. (Applause.) But, my fellow-citizens, the total number of deaths in the Philippines, those occasioned by war and those occasioned by disease, those dying in hospitals, those occasioned by accident, including the Filipinos, some of whom found death under our flag, amounts to less than 6,000 men. I am willing to allow some margin to a candidate on the Democratic ticket, but for him to miss it 194,000 is inexcusable, even in the last days of a dying cause. (Applause.)

He tells us further that we have spent \$650,000,000 there. The record shows we have spent less than \$200,000,000, and I may add that more than half that amount was made necessary because of the attitude of his party with respect to the Philippines under the leadership of William Jennings Bryan.

Every old soldier present here to-night—and they are out in force, and I always feel courageous when they are

about (applause)—every one of them knows that the Southern Confederacy was on its last legs early in 1864; but when the Democratic National Convention met at Chicago in that year, and in its platform declared that the war was a failure and demanded an immediate cessation of hostilities, and nominated George B. McClellan as their candidate, every Confederate took a new hitch in his belt, seized his gun with a firmer grip, trod with a more determined step, and grimly said, "We will fight it out until after the election." And they did, and that period covered the campaign from Chattanooga to Atlanta, and the bloody battle of the Wilderness, where Grant fought, and men died by tens of thousands; and during this period tens of millions of dollars were expended that might have been saved, for they were determined to hold out, having such an inducement, until the election. After the election, however, they went down the toboggan until they faced surrender at Appomattox. (Applause.)

So it was that although Aguinaldo was already a fugitive before Mr. Bryan was nominated, yet they determined to hold out until Mr. Bryan, who was their hope, had his destiny determined, and when he was defeated and William McKinley continued in office, that rebellion went to the wall, and Aguinaldo, whom they had termed the "George Washington of the Orient," proceeded to set the Democratic party a splendid example by taking the oath of allegiance to the United States. (Applause.)

Now, my fellow-citizens, I don't want to detain you longer, and yet I would like to say a few things more. (Cries of "Go on! Go on!"). What I want to say to you is that while the truth is that the Philippines have



not cost us as much as \$200,000,000, yet it does not matter whether they cost us \$200,000,000 or \$650,000,000. Great national and international transactions are not measured by dollars and cents. When we took Hawaii we did not stop to consider how much it would cost us to pay her debts. We did not stop to consider how much money we would have to spend in Porto Rico, and when we concluded to invest the two or three hundred millions necessary to build the Panama canal, we did not stop and figure as to whether we would get dividends. We were providing for national defense for American commerce; for those great incalculable results that rise above financial calculation. We were thinking of the national defense and the common welfare.

But, my fellow-citizens, what is it we have been doing there? You would think from the way our Democratic friends are talking that we were doing something in the Philippines we ought to be ashamed of, something that we ought to apologize for. Not so. Let me say to you that in all American history there is not a more creditable chapter written than that which is being written by the United States in the Philippines. (Applause.)

Since that campaign of 1900, when Bryan was defeated and the insurrection collapsed, we have proceeded to establish civil government throughout the archipelago, and the government they have there to-day is the lightest in its burdens they have ever known. Participating in the administration of that government are more Filipinos than they ever dreamed would be allowed to have part in their government. Every Governor of a province and every Mayor of a municipality, with but few exceptions, are Filipinos. There are

8,000 Filipinos on the pay-rolls of the civil government in the Philippines; and, as a result, it is true, as was said by the chairman of the Filipino Commission some time ago, that while they were hostile to us at the beginning (he was one of the insurgents), it was because they did not know any difference between the United States and the Spaniard, but to-day he says all that is changing. "We have peace; we have participation in government; we have the best government we have ever known; and there is more happiness and more contentment among us than we ever expected to have under a government even of our own." (Applause.) He said, in addition, if the United States should withdraw its authority he would not want to return to his home.

But, my fellow-citizens, it is not alone civil government and just treatment that have won the hearts of the Filipinos. We have been doing something else. We have been establishing schools there. There are now in the Philippines 2,000 little American school houses, with a little American flag flying over each one of them (applause), and a little American teacher inside of each one of them. (Applause.) Every one of those school houses is crowded from early morning until late evening by Filipino children who are hungering and thirsting for education, and particularly for knowledge about the United States. (Applause.)

I was talking with one of these teachers a few weeks ago, and was told that the only trouble they have with these little Filipino children is to get them to go home when school lets out. (Laughter and applause.)

Not only have we these day schools, but we have been compelled, in answer to the demands of the adults for

education, to establish night schools. In Manila we have also established a great normal university, where we are teaching Filipinos, preparing and qualifying them to be teachers of their own native children. (Applause.)

The demand has been so increased that at almost every post where we have not been able to furnish teachers, the officer in charge has been detailing enlisted men to teach. My fellow-citizens, instead of its being discreditable, it is one of the most creditable chapters that has been written in modern times by the United States. (Applause.)

My Democratic friend, don't you wish you had something to do with it? (Applause.)

It is necessary that we should have a minority party; it performs a good office. It puts us on inquiry; it makes us investigate; it keeps us humble—from getting proud; keeps us attentive to business; but you don't have to stay in this minority party forever. (Laughter.) Now is a good time to get out of it. You can't do Judge Parker any good anyhow. (Laughter and applause.) His case is already lost, and I advise you to get over into this Republican party that does things and does grand things ever. (Applause.) You have no idea how good you will feel when the returns are coming in. If you come over and help us you can burn tar barrels with us the night of the election. (Laughter and applause.)

Suppose now that this country should go Democratic on the eighth day of November, and Judge Parker be elected and be put into power, committed as he is to an abandonment of the Philippines—(cries of "Soup houses!") Yes, there would be soup houses; but I am thinking of what would happen in the Philippines.

I suppose Judge Parker would appoint some "minister paramount" to officially communicate to our representative there the fact that he had been elected and inaugurated—some "minister paramount," I say, to go over and officially order the army to come home and the navy to sail away and back to the United States. He might get along pretty well with that, but what a spectacle there would be—what a trial of his nerve when he undertook to visit these school houses and give them the word. Imagine him going up to one of these school houses and knocking on the door. The teacher opens it and says: "What is it?" "Beg pardon, madam, but I've come to tell you that Parker is elected." (Laughter and applause.) "Roosevelt has been defeated. The Republican party has been turned out of power. The Democracy have come in. The policy of the United States is to be changed with respect to the Philippines, and I have come here to tell you of that." "What is it you want to do?" "I want you to dismiss school. Tell the children to go home; take their books with them; they need not come back; there will be no school here to-morrow." (Laughter.) "No school here next week, or next year. Pull down the flag" (Cries of "never!"). "Pack up your duds, and make haste to get into Manila and on to a transport, for fear the French, or the Germans, or the Russians, or somebody else will come in before we get away to take our place." (Applause.)

My fellow-citizens, do you want to see such a proceeding as that? (Cries of "No!" "No!") You don't want to see it, and no man will ever be elected to power who advocates any such a result. (Applause.) It would not only be an act of poltroonery that would

brand us before the nations of the earth as incapable, but it would destroy all our prestige, our influence, and all our power in the Orient to keep open the door to American merchantmen. There would be no selling there any longer of our products.

If you would know what a magnificent influence we have, recall what happened when the Boxer revolution broke out in China. That was in 1900, while President McKinley was yet in office. We had treaty obligations with China, according to which the President has a right to insist that our representative, our minister there, should be protected. When, therefore, he was penned up in the capital of that Empire and threatened with death, as they all were, we concluded we would join all the other Powers and send a relief expedition. President McKinley so ordered. We did not send them from San Francisco, nor from Ft. Thomas. They simply went over six hundred miles from the Philippines, and gallant Gen. Chaffee, an Ohio soldier, was at the head of them (applause), and they were over there on the ground, prepared for business, before some of our Southern Senators got done with their usual examinations of the Constitution. What they wanted to know was: "Whar do you all find authority to do anything in China?" "Whar do you all find it?" "It's not in the document." (Laughter.) But let me speak of an incident that I have been told occurred there:

The commanders of the several little armies from the different countries held a conference. All except Gen. Chaffee were of the opinion that they were not prepared to start immediately for Peking. The roads were bad, the Boxers were numerous; nobody knew how many or how troublesome. The situation was un-



promising. They said the ministers were probably all killed anyhow, and therefore nothing would be made by hurrying, and so they would not start for a week or even later. When it came Gen. Chaffee's turn to speak, he said: "I am sorry to hear the conclusions you announce, for if you adhere to them it will be impossible for me to co-operate with you. I am here under peremptory orders from President McKinley to go at once to Peking, and I propose to start to-morrow morning at five o'clock." (Applause.) The next morning at four o'clock the reveille was sounded in the camp of that little American army; the men aroused, built their fires, got their breakfast, packed their knapsacks, shouldered their rifles, unfurled the flag, marched out on to the highway, and started for Peking, and as they did so they found, to their great satisfaction, that every one of the other little armies had concluded to go along. (Applause.) The United States of America could not thus have led ten years ago, but thus we lead to-day, and now, my fellow-citizens, I want to say, in conclusion, that the great objection I have to Democracy is that it never can find power to do anything. Democracy is predicated on the teachings of Thomas Jefferson, a great man, who rendered conspicuous service, whose name will live forever in the gratitude, as well as the history, of the American people; yet his teaching was to magnify the State and minimize the national power. In that earlier day it was disputed that the Federal Government had power to make internal improvements; it was said it could not build the national road through Pennsylvania and Ohio, and it did not until after a protracted debate.

And thus they denied our power to levy tariff duties

for purposes of protection, and when we got into war with Spain they denied our power to despoil the enemy of his territory, unless, at the conclusion of the war, we intended to give it back to him, or make it a State of the Union.

The Republican party, on the other hand, found its platform in the teachings of Alexander Hamilton, who taught that the Federal Government has not only all powers expressly delegated, but also all implied powers necessary to the execution of the expressed powers. (Applause.) That the power to make war carries with it the power to destroy the enemy, to sack his cities, destroy his ships, take away from him his territory—just as we took Cuba, Porto Rico, the Philippines, and just as we would have taken the whole of Spain herself in three months more. (Applause.)

In other words, the Democratic party had been an incapable and unsatisfactory agent, because it is founded on the basic idea of "Cant"; "You can't do it"; "No power to do it"; "It is not according to the Constitution."

The Republican party has been doing things, because it believes George Washington, Benjamin Franklin, and Alexander Hamilton, and all our fathers, when they made the Constitution, intended to bring into the family of nations a sister not inferior in sovereign power, but one equal in sovereign power to the greatest of all the nations; and they foresaw that the time would come when this American Republic would stand, not at the foot, but at the head, of the nations, as we do to-day. (Applause.) We have simply proceeded upon this idea. The results are known of all men.

Yes, indeed, my fellow-citizens, it is a great record

of achievements that the Republican party has to its credit, but I am not going to dwell on it. You know the story better than I can tell it.

One word more, in conclusion: Hamilton County Republicans never had a better ticket in the field than they have this year. (Applause.)

You have two splendid representatives of the Republican party as your candidates for Congress. When you go to the ballot-box on the eighth day of November, go there not only to make sure the triumphant election of Theodore Roosevelt, but also the triumphant election of every man on the Republican ticket, from top to bottom. (Prolonged applause.)







# Supreme Court of Ohio.

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THE CINCINNATI STREET RAILWAY  
COMPANY, a Corporation under the  
laws of Ohio,

*Plaintiff in Error,*

*vs.*

THEODORE HORSTMAN, on Behalf of  
the City of Cincinnati,

*Defendant in Error.*

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## ORAL ARGUMENT FOR PLAINTIFF IN ERROR.

MAY IT PLEASE THE COURT:

It may be helpful to us all if, at this stage of the argument, I restate in a brief way, the character of this litigation and the several propositions upon which we rely for a reversal of the judgment below.

This is a suit that was brought by the plaintiff in his capacity as a tax-payer on behalf of the City of Cincinnati, under the provisions of Sections 1777 and 1778 of the Revised Statutes to enjoin the Cincinnati Street Railway Company from the operation of what is known as its John Street route, that being only one of a number of the lines of street railway that it owns and operates in the City of Cincinnati.

The injunction was prayed for on the ground that the

franchise to operate this John Street route was invalid because granted by the City of Cincinnati, under and by virtue of the provisions of what is known as the Rogers law, which law, it is claimed, was unconstitutional.

The Court below on final hearing allowed an injunction as prayed for.

To reverse that judgment the plaintiff in error relies upon four general propositions:

First, The Rogers law was not unconstitutional.

Second, Even if it were, the city was estopped when this action was brought to bring and maintain such a suit.

Third, If both these propositions should fail, still the judgment below should have been one of dismissal of the plaintiff's action because after the bringing of the suit, but before trial was had, the Legislature enacted Section 31, of the new municipal code, the latter clause of which contains a regrant of the franchise in question with other franchises of similar character; and,

Fourth, If all the first three propositions should fail, still it was error in the Court below not to dismiss the action upon final hearing because after the bringing of the suit, but before the final hearing, the Legislature enacted Section 137 of the new municipal code providing that no action of this character should be brought, except within one year after the transaction complained of was had, and this limitation was made applicable to pending cases, and, therefore, to this case.

Under each of these general propositions there arise a number of questions which have been elaborately discussed in the briefs filed by counsel.

In the limited time allowed me I can do but little more than indicate what these questions are, and our view with respect to them; but in view of the elaborate arguments in the briefs, and what has been said here now by associate

counsel, this is all that, in my opinion, it is necessary to say in concluding this argument.

Taking up these general propositions in their order allow me to restate the objections to the Rogers law, and our answers, but before doing that, in order that the Court may more intelligently construe this statute, I shall briefly call attention to the nature of the Rogers law and its gradual evolution.

Your Honors will observe that it comprises three sections, 2505a, 2505b and 2505d of the Revised Statutes.

2505a is, stating it in a word, a statute that authorizes railroad companies to lease or purchase other street railroad lines under certain conditions as to physical relation to each other.

2505b authorizes consolidation of certain street railway lines when they have certain physical relations, as to meeting, intersecting, etc.

Section 2505d authorizes the granting of franchises for a period of fifty years by all municipalities in which there are separate and independent street railway franchises providing different terms and conditions which it is desired to consolidate or bring under a single control and management, provided certain provisions, not here necessary to be stated, are complied with on behalf of the so to be consolidated railway company.

The history of the development of the street railway business is important as showing the purpose of this legislation and the gradual growth of it to the form it has taken in this Rogers law.

Confining myself for purposes of illustration to the street railway business in Cincinnati, the establishment and operation of street railway routes in that city commenced some time in the fifties.

The first line, without meaning to be entirely accurate,

but only to illustrate, commenced at Fourth and Main streets, which was then considered as practically the business center of the city, extended by various streets north and west to somewhere in the vicinity of what was then known as the Brighton House, if I am not mistaken, and thence by other streets returning to the place of beginning; a very short line in the densely populated part of the city.

From the same point, or near the same point, shortly thereafter, in rather rapid succession other similar routes were established, some extending up the river, some down the river, some into the northeastern part of the city, others into the western part of the city; all of them short routes, and all of them in competition one with another.

No transfers were allowed because no such thing had at that time been thought of. No percentage on gross earnings was paid to the city by any of these routes because nothing of that kind was at that time thought of.

There was no harmonious operation of all these lines as in a common system, but each line was operated on its own account.

From time to time other routes were established until in all, I believe, there were established, constructed and put into operation twenty-five different routes or lines; probably no two of them had the same terms and conditions; a number of them had different rates of fare.

To come over some of these lines from the outskirts of the city down to its business center cost 15 cents. On some it cost 10 cents; on some it cost 8 cents; on some it cost 6 cents, and on some it cost only 5 cents.

These routes having been granted at different times expired at different times.

The original construction was of unsubstantial character, with light rail and the cars were of small and inferior character. The motive power was animal: horses and mules.

Shortly after this business commenced those engaged in it found themselves in each other's way to such an extent that it became desirable not only for their own welfare, but also for the public good, to secure a legislative enactment under which that kind of property could be dealt with as other property in the matter of leasing, purchasing, selling, etc., and, therefore, it was that the Legislature was applied to and granted by proper enactment what was the beginning of Section 2505a, as it is now found in an amended form, as a part of the Rogers law.

The next step in street railway development and in street railway legislation, in so far as it concerns this case, was the necessity, both for the benefit of those who were engaged in the operation of these competing lines, and also for the benefit of the traveling public that was to be accommodated, to secure the right of consolidation, and thereupon as early as in the sixties the Legislature was applied to, and, in response thereto enacted what was the beginning of what now appears in this act in its amended form as Section 2505b, whereby competing lines in the same municipality were allowed to be consolidated, provided they met, or intersected, or were so situated with respect to each other as to be easily connected.

Certain terms and conditions, not necessary here to be mentioned, were prescribed as conditions of consolidation, all supposed to be in the interest of the public as well as in the interest of the street railway companies.

There was nothing, however, in that legislation *requiring* consolidation, or providing any special *inducement* for consolidation.

The consequence was that while there were a number of consolidations, yet there was not anything like such general consolidation as the public interest demanded.

The trouble was that the line that had the privilege of



charging a high rate of fare did not care to consolidate with a line that could charge only a lower rate, and by such consolidation surrender its advantages as required by the statute.

Other advantages might be mentioned as possessed by one company and not possessed by another standing, as did the difference in rates of fare, in the way of bringing about general consolidation into a single system with a common rate of fare and the same terms and conditions of franchise and operation.

In the meanwhile great changes were rapidly being wrought in the motive power and in the general construction and general equipment and operation of railroads. Horse cars were giving way to cable power, and finally cable power was giving way to electric motive power, and with these advantages in motive power, and corresponding advantages in equipment from light cars to larger and heavier ones, there was a necessary and corresponding change in the construction of the tracks and the character of rails employed.

No track was satisfactory that was not laid in concrete and the weight of rails rapidly increased from thirty pounds to the yard to fifty-two pounds, then up to seventy, then ninety, and finally one hundred and ten pounds to the yard.

These changes in construction, especially those made necessary by the introduction of electric motive power involved a practical reconstruction of all the lines, including the beds, the ties, the rails, the cars, central station plants, and everything else.

This reconstruction, thus made necessary in the larger cities, involved the expenditure of many millions of dollars.

What the accommodation of the public required was not only a reconstruction that would meet these modern re-

quirements of street railway transportation, but also a consolidation of competing lines into one general system to be harmoniously operated at a cheap rate of fare, and on other terms and conditions that were both fair and reasonable.

At that time there were in the City of Cincinnati three separate, independent companies. Two of them had each one competing line. The other company owned and controlled by one kind and another of grant and ownership the other lines.

On some of these lines tickets were sold. On others cash fares were paid. The fares ranged all the way from six tickets for twenty-five cents to eight cents, and even higher rates of fare on some lines.

Some of the franchises held by these lines respectively expired eight or ten years after that date.

Others had, respectively, twelve, fifteen and seventeen years to run, and one of them, I believe, as much as twenty-one years to run.

It was desired by those interested in the ownership and operation of these lines to bring them all under one consolidated ownership or control. It was further desired by the same interest that the common system thus to be created should have one common fixed date when all these franchises should expire.

It was desired that all these lines should be operated upon the same general terms and conditions, and it was especially desired that these routes which had been established in a haphazard way should be revised and recast, to the end that they might be more economically operated, and with greater accommodation to the public.

This desire of the railroad company was shared in most respects by the general public. They had found it was for their accommodation and their benefit to have a common

system, one common fare, with transfers from one line to another going in the same general direction, and it was desired by the whole community that these street railroads should pay to the city for the use of the streets a higher and more satisfactory compensation than had ever theretofore been exacted.

To bring about this consolidation and these improvements in construction, equipment and operation it was necessary to secure legislative authority, and thereupon application was made to the General Assembly which, in response, passed Section 2505d as the Rogers law proper, and reenacted the preceding Sections 2505a and 2505b, with slight amendments not involved in this litigation, and, therefore, not necessary to be mentioned.

The purpose of this legislation was, therefore, to meet not only the just demands of the street railway interest that they might be given a long term franchise, whereby it would be made easier for them to raise the large amount of capital necessary to reconstruct their consolidated system and make it conform in construction and equipment to the latest inventions connected with the use of the electric motive power, but also it was the purpose of this statute to meet the just demands of the public that they should have instead of competing lines over which the transfer systems could not be extended, one common system with transfers, and all the facilities for cheap and satisfactory travel by rapid transit.

In other words, the time had come when it was necessary as well as appropriate for the legislature to go further, than it had gone in merely authorizing consolidation, and enact a statute that held out to the railroad interests inducements for consolidation in the form of longer franchises, coupled with terms and conditions such as transfers, tax on gross earnings, and common fare, etc., that would

amount to a just compensation to the traveling public and the municipality for all the advantages conferred, and the Rogers law was the result.

With this history of street railway development and street railway legislation culminating in this so-called Rogers law, I come now to consider the objections that were successfully made to it in the court below.

It was claimed and held there that the Rogers Law was unconstitutional because, although general in its terms, it was nevertheless a special act that conferred corporate power on the street railroad company, to-wit: the power to take a fifty year franchise and also the power to appeal to the courts to protect it from an inequitable rate of fare, if one should be fixed by the municipal authorities in the exercise of their power to revise terms and conditions at the end of the respective periods of twenty years and fifteen years, as provided in the statute.

The act was not special, but for the sake of argument, conceding that it was, these two points can be conclusively answered with a word.

The street railway company did not take any additional power in either of these respects, because it had plenary power under the general law of its incorporation to take franchises to construct, maintain, and operate street railways without limitation as to term, and it also by virtue of that same general law of its creation had power to sue and be sued, and therefore, to go into the courts at will for the proper protection of its rights.

The second objection was that being special it conferred corporate power on the municipality. We concede that it conferred additional power on the municipality, but deny that the law was special.

Our claim is that it was general, and therefore, not invalidated by reason of the fact that it conferred additional

power on the municipality. It is admitted that by its terms it was general and that is shown to be the fact by our answer to the remaining objections.

The third objection was that the classification prescribed by the law was so arbitrary and unreasonable that it made the law special and not general as its language imported.

A fair construction of the statute overthrows this point. The law applied to all municipalities throughout the whole State, where there were two or more lines operated under different terms and conditions, owned or controlled by different interests, which met or intersected or might be easily connected, which lines it was desired to bring under one control or ownership.

It is common knowledge that not only in Cincinnati, but also in Cleveland, Columbus, Toledo, Dayton, and perhaps other cities of the State there were at the time when this law was passed railway lines in operation that answered this description of the statute.

The statute, therefore, created a class that included all these municipalities because in all of them the statute might be invoked just as it was in Cincinnati.

No one could foretell then, or can foretell now, to how many other municipalities the statute might apply during the period of fifty years from and after its passage.

The contention below to show that this classification was unreasonable was that this statute would not apply to lines consolidated prior to its passage, nor would it apply to lines at that time not consolidated which would have the same physical aspects described in the statute, and the same relations generally to each other, but which would be held by the same company or corporation under direct grants from the municipality.

Our answer to all this is that,

First, It was not intended that this statute should apply



to consolidated lines, where the consolidation had occurred prior to the act, for already in such cases the purpose of the act had been accomplished, viz.: to bring together different lines into one common system, for common management, with common fares, terms and conditions, etc.

In other words, the purpose of the statute was not to deal with what had already been accomplished in the way of consolidation, but for the common good of the railroads and the public induce further consolidations in the cases described.

As to the suggestion or surmise of counsel and the Court below that there might be in some municipalities competing lines operated upon different terms and conditions as to fares, etc., the franchises to which were held, not by different interests, but by the same interest, under direct grant from the municipality, our answer is that so far as we have knowledge no such lines so held could be found within this or any other State because of the extreme improbability that the same company or corporation would take or be allowed to take directly grants within the same municipality with differing rates of fare and other terms and conditions. The same company having a street railroad within a municipality and desiring another line additional would doubtless acquire the franchise for it by extension rather than by establishing a new and independent line.

In the absence of proof to the contrary it is so improbable that there would be found such a case that it was nothing short of a real tax on ingenuity and imagination levied in a spirit of hostility to the statute in question, to find some way to overthrow it.

The authorities are conclusive that the Court is not justified in indulging in such surmises and speculations, and that it would not be permissible to hear evidence to establish such a fact even if it were possible to establish it.

Inasmuch, therefore, as it was not the purpose of the statute for good reasons already stated, to apply to consolidated companies already created, and inasmuch as there were not in all probability any such lines as those surmised by the court, and not one word of testimony in the case to show there were such lines, and no allegation in the pleadings to that effect, it follows that the Legislature did not make an arbitrary and unreasonable classification, but one that was reasonable and fair, and that it was governed in making the same by a legitimate purpose, of which the Legislature was the sole judge.

Much has been said by counsel on the other side about the careful consideration and great learning and ability of the Court below as shown by that Court's opinions which are embodied in and made a part of counsel's brief.

When your Honors come to read and study those opinions in the light of the facts established by the record in this case you can better judge of the character of the consideration given this case by the Court below and you can better understand whether those opinions show learning, wisdom or even judicial temper and disposition.

A fourth objection is that the law was by its terms to continue in force for only a period of fifty years from and after the date of its passage, and that consequently all who invoked its benefits would do so upon what has been termed a sliding scale; that is to say, those who took advantage of the law during the first year of its existence would secure such extensions of the franchises they already held as might be necessary to make them fifty years in duration. Those who did not take advantage of the law until five years thereafter would secure franchises to only forty-five years in duration, and so on down to the end of the period this statute was to continue in force.

The contention is that a law must not only operate uni-

formly throughout the State upon all objects embraced within the class to which it applies in the same manner, but that it must not be temporary, but on the contrary without limitation of time it is to be in force.

In the briefs filed in this case authorities are cited completely and conclusively refuting this claim. I content myself, therefore, with calling attention to the fact that after the Court House in Hamilton county and all the records of the court and the recorder's office were destroyed by fire during the riots of 1884, the General Assembly passed a law providing for the restoration of records, which provided that proceedings might be instituted in the Courts therefor within six months from and after the passage of the act as to certain records specified, and within five years from and after the passage of the act as to other records. This statute was acquiesced in by everybody, and under it title to property was restored and established to the amount in value of many millions of dollars; yes, many tens of millions of dollars in Hamilton county.

To now hold in this case that because this law was to endure for only fifty years it was invalid would be not only in conflict with the many authorities cited in the briefs, but it would also necessarily affect the validity of all the restoration proceedings to which I have referred; a most undesirable and disastrous result which the Court should not bring about except under the extremest compulsion.

I have no time to say more about the Rogers law proper, except that for the reasons given it did not lack validity but was a constitutional enactment which should be upheld.

But if our contention in that behalf should fail, then our claim is that the city on behalf of which this suit is prosecuted is estopped by what this record shows from prosecuting this suit.

It is claimed on the other side that a municipality cannot

be estopped by what it may do under an unconstitutional act.

I do not concede this contention; certainly not without important modifications, but conceding the point as a general proposition for the sake of argument, I call attention to the fact that this suit is brought by the plaintiff as a taxpayer on behalf of the city under a statute which provides that if it be established that the plaintiff had just ground on which to bring his suit, it does not follow that the Court is to grant an injunction; for the language of the statute is that then the Court "*shall make such order as equity and justice may require.*"

In other words, what has happened in this case was doubtless in the mind of the Legislature when this provision was enacted. That is to say, it was doubtless then foreseen that such a suit might be brought by a tax-payer after conditions had changed, money had been expended, and interests had become involved to such an extent that it would be inequitable to peremptorily enjoin further proceedings under the contract under consideration in such case, and thus leave the parties just where they were found when the litigation was commenced, and, therefore, while the statute authorizes such a suit, it at the same time commands that the Court shall consider the equities, and if the Court finds that parties acting in good faith have expended money, or have created interests of any kind that should be protected, an order shall be made that will so provide.

In other words, equity and justice upon all the facts and under all the circumstances shall be done.

In other words, again, this provision of the statute is a command from the Legislature upon the Court peremptory in its character, that the principles of estoppel shall be applied.

This command of the statute takes this case out of the

ordinary rule, whatever that may be, as to the question of estoppel when applied to municipalities, and makes this class of cases a class by itself in that respect.

Being a case of this character it was the duty of the court below to take into consideration the fact that for five years after this Rogers Law was passed, and almost five years after the franchise under it was granted by the City of Cincinnati to the street railway company, there was absolute acquiescence in the constitutionality and the validity of the statute, and all proceedings thereunder. No one on behalf of the city, or on behalf of the railroad so far as this record discloses had any suspicion that the law was invalid, or that any proceedings under it were to be attacked, or called in question until this public spirited tax payer heard that the Cincinnati Street Railway Company was about to lease its property and he was then suddenly moved to bring this suit.

During this long period, acting in perfect good faith, the railroad company expended \$5,300,000, all under the direction of the municipality, acting through its proper officials, in reconstructing its tracks, providing electric motive power, new equipment and in conforming generally to the terms and conditions embodied in the franchises that are now assailed.

Among other things, the Street Railway Company was required to pay a judgment of large amount in favor of the City of Cincinnati owing by one of the lines embraced in the consolidation. It paid this judgment. The city received the money as the record shows.

It was required to make other expenditures of specific character that might with equal propriety be named, if I had time to do so.

During all this period the city received from the railroad company five per cent. upon its gross earnings, car license fees, etc.



During this period the city was constantly enforcing all the conditions of the new grants as against the company. At no time, even down until this period, has any officer of the City of Cincinnati questioned the validity of the Rogers Law, or the grants made under it. On the contrary, they have constantly treated the same, notwithstanding this litigation, as valid and enforceable against the street railway company; and at this very time a suit is pending, brought since this action was commenced by the corporation counsel of Cincinnati to compel the street railway company under the terms of its grants to give transfers over the interurban lines, which have entered Cincinnati since the Rogers Law was passed, and which the company claims it is not required to exchange transfers with.

That action is now being prosecuted by the city upon the theory that the Rogers law and these grants are valid. All this is shown by the record. Nevertheless it was all disregarded by the Court below, or at least, the Court, in making its final order, did not seem to think that equity and justice required that there should be restitution or protection, or reimbursement of any kind whatsoever. I do not hesitate to say that this was not only erroneous, but it was injustice to the point of judicial outrage.

I have only time for a few more words. I shall use that time in calling attention to the regranting clause found in Section 31 of the new municipal code enacted after this litigation was commenced.

Counsel on the other side has referred to this as a "curative" act and a "boot-strap" section, "as it is commonly called," by him, and possibly by the Court below and others who are apparently determined to refuse to comprehend its real character.

The section is not curative in character. It was not intended to make constitutional an unconstitutional law. It

was not intended to make valid invalid grants under the Rogers law or any other law. The section does not have any retrospective or retroactive operation.

It might have been passed, and in view of the distrust as to the validity of franchises occasioned by the decisions of this Court that led to the convening of the Legislature in extraordinary session, it might have very well been passed, and doubtless would have been passed, or something similar to it, if there never had been any Rogers law, or any grants of franchises under that law.

By reason of the decision of this Court to which I have referred there was great disquiet at the time of this enactment as to franchises generally for the use of the streets of municipalities. This was shared by electric light, telephone, telegraph and gas companies, as well as by street railway companies.

To allay that distrust and disquiet, and give confidence the Legislature saw fit to pass this statute, which has no operation or effect, except only prospectively, and which has no reference to the Rogers law, or to any other specific statutes or grants, but to all statutes and all grants, of every kind within the description of the section, and, therefore, to valid grants as well as to invalid grants.

The provision is that all grants, throughout the whole State, in every municipality, and of every kind, whether street railway, gas, electric light, telephone, or telegraph, or what not, are regranted upon the same terms and conditions for the remainder of their respective terms. The purpose of the Legislature in thus regranted valid as well as invalid grants was to set at rest all question that had been raised in all cases within the provision named, which provision was that the regranted should apply in every case where it had been made in accordance with the provisions of a statute existing at the time when it was made,

and where in good faith money had been expended on account thereof.

This applied to the grants involved in this case, but it applied also to all other grants of every kind and description I have mentioned throughout the whole State, but it did not in this case, or in any other case affect the grants, in so far as they had already expired. If they had been invalid down to the passing of this act they remained invalid as to the past after the act as well as before, but whether valid, or invalid, they were by this section re-granted, this section taking effect in the moment of its enactment and operating prospectively, and thus making a new and valid grant in every case to which it applied.

It is for this reason that the Court was not warranted in characterizing it as a curative statute, or announcing that "obviously," or "manifestly," it was not within the power of the Legislature in that way to make an unconstitutional law constitutional. Such remarks only show flippancy and lack of comprehension or lack of fair consideration, or lack of judicial fairness in interpretation.

Such being the character of this enactment the question is whether or not it was within the power of the Legislature to make a grant directly to the various companies concerned of rights and franchises to use the streets of the municipalities of the State.

As to this proposition the authorities are overwhelming. There are no authorities to the contrary. Municipalities are but agencies of the State. The Legislature can make or unmake them at its pleasure. The title of the streets of a municipality are in the municipality, but in trust, for the use of the people of the State, and these streets like all other highways of the State are under the absolute and unquestioned control of the Legislature. The Legislature usually employs the municipality as an agency in granting

rights to use the streets, but it is not necessary that it should do so, and in many instances it has not seen fit to do so, but has made grants of the right to use the streets of municipalities directly, as in the case of telegraph companies, electric light companies and telephone companies, to all which companies the grant to use the streets comes directly from the State to the company, and all the city can do is to prescribe the mode of use, or, in case of its refusal to act, the Probate Court may prescribe the mode of use which the Legislature has granted.

It follows from all this that the Legislature had full power to make the grant in question, or regrant whichever it may be called, and to make it directly. It had power to name the terms and conditions of such regrant in the statute, or it had power to name those terms and conditions by reference to some other instrument, and it could not affect the validity of such reference, if the instrument referred to were invalid, for the Legislature might adopt by any intelligent reference the terms and conditions it would prescribe.

With this hurried and imperfect expression of our view of this section, I am compelled to be content, for I see that my time is exhausted. I regret that I have not time to go more elaborately into this whole subject. I have no time to speak of the statute of limitations except only to say that I fully agree with all that Mr. Kittredge has so ably and forcibly said on that point.





STATEHOOD BILL.

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SPEECH

OF

HON. JOSEPH B. FORAKER,  
OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

February 6 and 7, 1905.

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WASHINGTON.  
1905.

SPEECH  
OF  
HON. JOSEPH B. FORAKER.

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*February 6, 1905.*

STATEHOOD BILL.

The PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business, which is House bill 14749.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 14749) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States.

Mr. FORAKER. Mr. President, the pending bill contains two general propositions. The first relates to Oklahoma and Indian Territory, providing that they shall be joined and admitted to statehood as one State. The other relates to New Mexico and Arizona, providing that they shall be also joined together and admitted as one State to the Union.

So far as the first proposition is concerned, I have no objection. When I say that, I do not mean to speak particularly of the details of the measure, but only of the general proposition for the union of these Territories as one State and the admission of that State into the Union.

As to the details, knowing, as we all do, the ability and the care that the committee reporting this bill always brings to the consideration of any subject before it, I assume that they are what they should be. If I were to make any comment at all, it would be that it seems to me somewhat inconsistent to provide that a State shall be admitted to statehood on an equal footing with the original States, and then, in the same measure, undertake to restrict the supreme sovereignty of that State and make it inferior in sovereign power to the other States of the Union. But that is a matter I do not deem of enough importance to devote any time to it in this connection. I mention it only to show that it has not been overlooked in the consideration of the bill.

I have no objection to the admission of Oklahoma and Indian Territory as one State, because so far as the union of these Territories is concerned, that has, as I understand it, always been contemplated since the time when Oklahoma was carved out of the original Indian Territory, and made a Territory and given a

Territorial government. In the enactments of Congress relating to that subject the ultimate union of the two Territories into one State was recognized and it has always been recognized.

Another reason is that, so far as I am aware, there is no substantial objection to the union of these Territories on the part of the people of either Territory. So far as I am advised, they are anxious to have this measure enacted into law; they are anxious to be joined together and made one State and to be admitted into the Union.

Again, I am in favor of that proposition, they having no objection to the union that is proposed, because, as it has been time and again said in the course of this debate, these two Territories, so joined, will make a splendid Commonwealth; a little larger than I would like to see—70,000 square miles of area—but no larger upon the average, I believe, than other States in that part of the country. We know that the State will have a fertile soil, and that it is blessed with almost inexhaustible resources of coal, iron, oil, and everything else calculated, when properly developed, to make the State one of the richest as well as one of the most populous in the country. So I am heartily in favor of that proposition.

My objection to this measure goes only to the second part—that which relates to New Mexico and Arizona. Shortly after the consideration of the measure commenced I offered an amendment, which is lying on the table, I believe, providing that in line 24, on page 26, after the word "question," there shall be inserted the words "in each of said Territories," the purpose of that amendment being to make it necessary, in order to carry out the proposition of this measure with respect to these two Territories, to secure a majority vote in each of said Territories.

Later, some days ago, I offered another amendment. This second amendment provides for the striking out of all that part of the bill which relates to New Mexico and Arizona and substituting therefor separate statehood for New Mexico and Arizona. Inasmuch as under the discussion of this second amendment I can say, and will necessarily have to say, all that I had been intending to say in support of the first amendment to which I called attention, I shall proceed in the few minutes I shall take to consider this last-mentioned amendment providing for striking out and the substitution of separate statehood.

Mr. GALLINGER. Will the Senator permit me to ask him a question at this point?

Mr. FORAKER. Certainly.

Mr. GALLINGER. The Senator from Ohio has stated that as far as his information goes there is no opposition on the part of the people of either Oklahoma or Indian Territory to making one State of those Territories. My information on that point is different from that of the Senator. I have a good deal of information to the contrary, and I will ask the Senator, if his amendment should go into the bill requiring a majority vote in the Territories of Arizona and New Mexico, whether he would have objection to a similar provision going in the bill in reference to the Territories of Oklahoma and Indian Territory?

Mr. FORAKER. No; I would not.

Mr. GALLINGER. I shall offer such an amendment, Mr. President.

Mr. FORAKER. I did not offer that amendment as to Oklahoma and Indian Territory because I was of the impression that is was the common desire of the people of both those Territories to be united in one State.

But, Mr. President, I did not mean to say in an unqualified way that there was no opposition. I suppose there are people in both those Territories who would be opposed to union; but what I meant to be understood as saying was that the overwhelming weight of sentiment there is in favor of uniting these two Territories into one State.

Mr. GALLINGER. I will give notice now that at the proper time I shall offer an amendment in reference to these two Territories similar to the amendment in reference to Arizona and New Mexico.

Mr. FORAKER. What is right and fair in one case should be in the other. I have no disposition whatever to question that. I offered it, in the first instance, because the people of Arizona are almost unitedly opposed to union with New Mexico, as I am advised, and because in the Territory of New Mexico there is a great opposition to it. I understand Senators are of opinion that a majority of those who will vote in New Mexico would vote for statehood united with Arizona, but the great majority of Arizonian people would vote the other way.

Now, I dislike the union of the Territories of New Mexico and Arizona, Mr. President, without regard to whether the people of New Mexico and Arizona would vote in favor of union. I would not stand in the way of admission as one State of New Mexico and Arizona if they were all, or substantially all, in favor of it, but I would still think it unwise; I would think it was making too large a State in area, and that the State would be too cumbersome to be enjoyed economically, and we ought not to make such a union.

But, coming now to speak of the amendment I last mentioned, that striking out and substituting separate statehood as to New Mexico and Arizona. I am opposed to the union proposed by the bill because, in the first place, it is a departure. I desire to call the attention of Senators to the fact that this is the first time, I believe, since the beginning of our Government when in admitting a Territory to statehood we have compelled it to unite with any other Territory. We have done just the opposite in many instances. Vermont, the first State we admitted, was separated from New York. Tennessee and Mississippi, as well as other States, were carved out of the territory south of the river Ohio, and when we came to make States of the territory northwest of the river Ohio we made, in the first instance, three, with permission to make two more; and, to avoid having States too large in area, we subsequently admitted Michigan and Wisconsin as separate States, dividing the Northwest Territory into five such subdivisions. When West Virginia was made a State she was taken away from old Virginia. So as to the territory acquired from Mexico. The States of Utah, Nevada, and other States were carved out of that territory; and when we came to make these Territories we first made the Territory of New Mexico, in the fifties, and then, in 1863, we made the Territory of Arizona by separating it from New

Mexico. We have pursued this policy in every instance, because we have had regard to the fact that States might be made larger than they should be.

We have constantly been cited, during the progress of this debate, to Texas. We have been told that Texas is larger than any State in the Union, and larger than one State made from these two Territories would be. But it must be remembered that when Texas was admitted it was provided that she might be divided into four additional States. She may never take advantage of that provision, but it indicates what the opinion of our predecessors was, and it indicates the character of precedent they have set in this matter.

Now, this is the first instance I can recall—if I am in error some Senator will, no doubt, correct me—where we have undertaken, after we have set up separate Territorial government with area and advantages sufficient for statehood, to join them together. It is certainly the first instance where we have undertaken to join them together without regard to their own preferences in the premises.

Mr. HANSBROUGH. Will the Senator allow me?

Mr. FORAKER. Certainly.

Mr. HANSBROUGH. I wish to call the attention of the Senator from Ohio to the situation in respect to the admission of the two Dakotas in 1889. There was a very strong sentiment in the Territory of Dakota against coming into the Union as one State, and a decided preference in favor of two States. Congress yielded to that sentiment and gave them two States.

Mr. FORAKER. I am much obliged to the Senator for calling my attention to that fact. I should have mentioned it. I mentioned it in my notes. Dakota, with an area of 150,000 square miles, a little less than that, to be accurate, was thought too large in point of area to be admitted as one State, and very able arguments were made in support of the proposition to divide it, and they were made by members of the Senate then who are still members of this body. I intend, before I conclude, to quote from some of the arguments made at that time in that respect.

I should also have mentioned the State of Maine, which was carved out of Massachusetts, but I have said enough to indicate what I want to impress upon the Senate, that the precedents we have set heretofore have been precedents of division and never of union, certainly never of the enforced union of Territories into a State.

We are told that States are not made up of square miles, that they are not made up of area, but of people. We all understand and appreciate that suggestion. But, Mr. President, the area of a State is a subject proper to be taken into consideration. All certainly will agree that the area of a State, especially if it be a sparsely settled State, as we are told this State forever will be, though I do not agree to that, may be too large.

Now how large is the area of this proposed State? I wish Senators to try to form in their minds a picture of the extent of this proposed State. I have been making some figures about it. I find that the whole of it will be as large in area as all New England, with New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, and three-fourths of Ohio. Now, just think of that as one State! I have been told that a citizen residing in the southeastern portion of this proposed



State, having occasion to go to Santa Fe, the capital provided by this measure, will have to travel about as far as from Keokuk, Iowa, to the city of New York. This proposed State will be 25 times larger than the State of Vermont; 25 times larger than the State of New Jersey; 30 times larger than the State of Massachusetts; 60 times larger than the State of Connecticut; 117 times larger than the State of Delaware, and 188 times larger than the State of Rhode Island. It seems to me, Mr. President, that the mere statement of these facts should be enough to satisfy every Senator that, if we admit those Territories joined together as one State, the people living in that State will not be able to economically enjoy their State government. They will necessarily be subjected to all kinds of inconveniences in connection with State matters.

When the question of dividing the Territory of Dakota was under consideration, the Senator from Connecticut [Mr. PLATT], one of the ablest, one of the wisest members of this body, a man who has been distinguished ever since he came to this Chamber as one of the most capable of American statesmen, one able always to give advice that it would be safe to follow—in connection with the admission of the Dakotas bore a very conspicuous part. He was on the Committee on Territories and was, I believe, the chairman of that committee. What he said about the Territory of Dakota I want to repeat, in reply to this proposed union of these two Territories. The Dakotas, combined, had an aggregate of about 150,000 square miles. It was thought that an area of about 75,000 square miles was enough for one State; and I agree with that. Mr. PLATT, in his report No. 586, first session Fiftieth Congress, said:

The present Territory of Dakota, in the judgment of your committee, is too large for a single State, and the time has fully come when both North and South Dakota should be admitted as States upon an equal footing with the other States of the Union.

Afterwards, in the debate which ensued, the Senator from Connecticut is reported as speaking, on April 19, 1888, as follows:

The Territory should be divided; and while I would respect the wishes of the inhabitants of the Territory to a great extent, I am so strongly convinced that the Territory ought to be divided that even against the wishes of a large portion of its population I should feel that it ought to be divided for the benefit of the nation and for the future security of the rights of the other States in the Union.

The Senator from Connecticut said in that connection just what I undertook to say a moment ago, that even if these two Territories of Arizona and New Mexico wanted to be united I would feel, for reasons which I shall undertake to give, that it would be unwise to yield to their desire in that respect. It would make a State too large in area and would make their enjoyment of their State government too expensive and inconvenient. The Senator from Connecticut continued as follows:

It is too large for one State. It is larger than anybody ever thought of making a State, with two exceptions (California and Texas). It is larger than anybody ever thought of making an agricultural State, with one exception, and that is the State of Texas, to which I shall allude further on.

Then after dealing at some considerable length with the area and comparing it with that of other States the Senator from Connecticut proceeded as follows:

It seems to me that when Senators seriously realize the area which this immense State would possess they can not but come to the conclu-

sion that even if the sentiment of the people were adverse to it and the people had a dream of empire to grow out of the admission of such a great State, yet Congress, having reference to the physical equality of all the States, if I may use that term, ought not to think of admitting one State into the Union so capable of sustaining a dense population.

I will comment on the difference between that State and the Dakotas in a moment.

It is larger than all of New England, New York, and New Jersey.

He could not add, because it did not admit of it, what I have added—larger than what is now the State of Pennsylvania, Maryland, West Virginia, and three-fourths of Ohio added.

It is larger—

Said he—

than Ohio, Indiana, and Illinois combined. It is larger than the combined areas of Kentucky, Tennessee, and Alabama.

In answer to a suggestion that has just now been made sotto voce—for I understand the suggestion has been made in a private way, though I could not help overhearing it—that the fact that the Dakotas were thought likely to have in the future a dense population differentiates that case from this to such an extent as to make these quotations inapplicable to this case. All that the distinguished Senator from Connecticut said at that time is even more strikingly applicable to this proposed State than it was to the States of the Dakotas, for the less dense the population the more these difficulties will be emphasized, to which I now, by reading from what he said, call attention. He said in the same debate to which I have referred:

The idea of proper self-government repels the notion that such a State would not be too large (150,000 square miles). It is impossible for the common people to take part in the concerns of the State in a State of that size. The expense of attending conventions of the State, the expense of travel from one portion of it to the other, from any portion of it to the capital, the expense of attending the legislature, is so great that it practically shuts out the common and poor people from a participation in the privileges of government and from accepting the responsibilities and performing the duties of government.

A little further along the Senator said:

Another thing is a practical denial of the administration of justice in its courts. Poor people can not travel long distances to attend court; they must have their courts near at hand.

Then, passing a few more sentences, the Senator spoke as follows:

The truth as to what size a State should be lies, like all other truths, between extremes. It should be neither great nor small; it should be of medium size, and that has been the principle on which the statesmen of this country have acted in the admission of States.

Mr. President, I submit, if there be a sparsely settled population in this vast territory, that is no answer to the objection which the Senator from Connecticut so well stated, to having here a State with too large an area, in the instance to which he was addressing himself. The expense will be just as great in this proposed State of Arizona to the common people, the poor people, to attend the conventions, and for other purposes, at the capital at Santa Fé, a thousand miles away, twice as far as they would have had to travel to reach the capital in the Dakotas, if we had left that State undivided.

Mr. HOPKINS. Mr. President—

Mr. FORAKER. I will yield in a moment.

The expense will be just as great to attend the courts ~~and~~ just as great to attend the legislature, except only in proportion

that they will be much greater in this instance than in the other. Now, I yield to the Senator from Illinois.

Mr. HOPKINS. Mr. President, I desire to ask the Senator from Ohio if the adoption of the direct primaries in the proposed new State would not obviate all the difficulties that come from attending conventions at the State capital? As to the question of administering justice, would it not be better to have the courts at various points in the new State than to have them concentrated at the capital?

Mr. FORAKER. Well, Mr. President, there might be found ways to overcome some of these difficulties. It might be that we could make such an arrangement to ascertain the sentiment of the people by an expression at the ballot box as to prevent the necessity of traveling to a State convention. But, Mr. President, I should think that was a matter we ought to leave to the State to determine in the exercise of its sovereign political power, just as we have left it to every other State in this Union. It is a great privilege in some States to attend conventions. The people want to select their delegates and send them to the conventions, and generally many desire to attend who are not delegates. I do not think the Senator from Illinois would absolutely exclude them from participation in all of the familiar political functions that we know so much about. Not only do they select the delegates and send them to the conventions, but the people themselves like to attend—even the common people, the poor people, to employ the language used by the Senator from Connecticut. They have a right to attend the conventions, and it is desirable they should attend; they have a right to have a State of not such great and immoderate size as that they can not wait on these ordinary facilities in the administration of government.

The Senator says we may have the courts distributed over this Territory. I suppose there would be the ordinary State courts distributed through the different counties, but it is not likely that there will be more than one United States court for a long time to come at any rate. I do not know what the provision of the bill is on this subject. It may be that there would be one United States court in each of the present Territories. If so, it would be in recognition of the fact that the State would be too large to require all of the litigants to resort to the capital, where one of these courts would be located. I suppose only the supreme court of the State would sit at the capital. It is suggested to me that all litigants who have occasion to prosecute errors, or who would have any business in the supreme court, have a right to attend the supreme court. The idea of requiring a poor man who has litigation to take a train, if he can find one—and I will speak of that in a moment—and travel a thousand miles in order to get to the capital to hear his lawyer argue his case, or to put him to the expense of sending his attorney a thousand miles to argue his case, involves an unreasonable hardship. But I suppose that might be obviated by simply submitting the case on the record without having anybody to present it or anybody to make an argument, except only by brief. That might be done, but that is not the American way of doing such things. It would be a denial of a very important right.

But I now come back to the fact that the population would be too dense, in contemplation at least, in the Dakotas and too sparse in New Mexico. I come back to the proposition that this will be too large an area for a State, and the people there will be subjected to unusual and unnecessary and unjust expense in order to wait upon the government, to attend conventions, to attend upon the supreme court, to attend upon the legislature, and to do other things which we know in the administration of civil government they will be called upon to do.

Mr. President, there are other reasons than these why these two Territories should not be joined together. In the debate that occurred in Congress when the Territory of Arizona was separated from the Territory of New Mexico, all this was pointed out. That division was not alone because combined they made too great a Territory for economical enjoyment of government in the opinion of our predecessors, who acted at that time, and made too large an area for a State whenever statehood should be given, but because there were some natural difficulties in the way of the continued union of these Territories under one government. One was found at substantially the very place where this State line runs in a range of mountains, which rise all the way from 4,500 feet above the level of the sea to 10,000 and more feet above the level of the sea. The line was fixed at that place because that natural barrier between these two Territories seemed to make intercommunication unreasonably inconvenient, if not impracticable, I have been told, and I have seen fingers run over the map here and have heard statements made in connection with it, that that line of mountains does not run along the line of division. I do not know what will be insisted upon in that respect by the chairman of the committee, who will close this debate, but I have been told by others that it does. We know from the record that the men who created the Territory of Arizona by enacting its organic law supposed they were placing the line at that point because they found there the natural division between the Territories.

Mr. BEVERIDGE. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Indiana?

Mr. FORAKER. Certainly.

Mr. BEVERIDGE. I did not intend to interrupt the Senator from Ohio at all, but I think it is due to the truth of the case and to the clearness of the facts to ask the Senator this question: If it were true that that natural barrier was the reason for dividing these two Territories, why was it that the first proposition to divide the Territory—the first bill that was introduced to divide the Territory—did not divide it on a meridian of longitude, but divided it upon a degree of latitude? Why was it that in the division proposed in the first bill it should be divided by a line east and west, 33° 30', instead of the one hundred and ninth meridian?

Mr. FORAKER. Mr. President, it was because, in the first instance, the propriety of dividing north and south along this range of mountains was not given sufficient consideration. When they came to investigate the subject, they concluded they ought to follow the line that nature had indicated whereby to divide these two Territories. That is the reason. Very frequently when we are impressed with the idea that there ought



to be some legislation on some subject, we do not, in the first instance, when we make the first effort, get the most satisfactory solution of the difficulty, but after we have talked about it we conclude that we started in error and we change about and make ~~it~~ what we think is more likely to be correct and what we think is better. That is exactly what happened in the case of Arizona.

Mr. BEVERIDGE. Mr. President, I do not wish it to be inferred by my silence at present that I acquiesce in the explanation made by the Senator from Ohio; but I do not want to interrupt him further at present. I shall, however, later speak on the point that he has made.

Mr. FORAKER. I shall never make the mistake, Mr. President, of assuming that the Senator from Indiana acquiesces in anything that is said in opposition to a proposition he is urging before the Senate.

Mr. BEVERIDGE. Certainly not. [Laughter.]

Mr. FORAKER. No; that would be marvelous.

I do not say, Mr. President, that is the only reason why these two Territories were so divided, but that was one reason why they were so divided, and that is the controlling reason why the line was put at that particular place.

We have been told by other Senators that the railroads have crossed over this mountain divide, and so it can not be very much of an obstruction. I took the pains to find out about the railroad crossing this divide, and the lowest point at which any railroad crosses this divide is a little more than 7,000 feet above the level of the sea. So it seems, Mr. President, that all this indicates that these Territories ought to be left divided, as our predecessors provided they should be.

But there is still another objection. We have heard a great deal said about the populations, respectively, of these Territories. I think the populations of both of them are good, but they are different. There is a marked difference between the majority of the population, as I understand, in New Mexico and the population in Arizona. In New Mexico, from what we are told, I suppose the Spanish-Mexicans are in the majority. They have been accustomed to a different mode of life, to a different language, to a different procedure—at least, as to language—in the courts, and in many particulars they have grown along their lines, while the people of Arizona have been growing along lines quite different in some respects.

There is a difference in religion. That is a troublesome question to deal with always, and a delicate one to make any reference to; but we all know that differences of that character should be taken into consideration in determining whether or not we are going to make a homogeneous people in a Commonwealth that we are to create. We have no right to yoke a people together who are positively diverse in any respects that are important, such as are the respects to which I have alluded.

When Arizona was created the whole matter was debated, not very elaborately, some may say, but all these points were touched upon, and it was thought by those who at that time divided Arizona and New Mexico that they would remain divided. The Senator from California [Mr. BARD] in his very able speech at the opening of this debate pointed out that at that time, doing something that had never been done before in enacting an organic law, it was provided in the organic law of



Arizona that it should remain a Territory until it was admitted to the Union. We are told that is not binding on us. That is true, but there is a moral obligation involved in it that we should not think of disregarding.

You do not find any such provision in any other organic act. You find in almost every other organic act the very opposite of it, in most cases the provision being that Congress reserves the right, at its pleasure, to attach the Territory so created to any other Territory or any other State in whole or in part. No such provision as that is contained in the organic act creating the Territory of Arizona. It was just the opposite, and was to the effect that Arizona should continue to be a Territory until admitted to statehood. I am not trying to quote the language exactly. It has been quoted so frequently that that is unnecessary, but I am stating the exact effect of it.

Now, proceeding upon the theory that they were divorced from each other, not for the time being, but for all time, those Territories, respectively, have proceeded to lay the foundations for statehood. In each Territory there has been established a school system; in each Territory they have erected their public buildings; they have their capitols; they have their penitentiaries; they have their benevolent institutions; and they have been growing all the time in the direction of separate statehood, and, accordingly, becoming attached to that which they themselves have created preparatory to statehood. It would be, it seems to me, an act of injustice, amounting almost to heartlessness, to now disregard their pronounced attachments for their respective Territories and institutions, and, without giving them any chance to be heard, compel them to be joined together and come into the Union as one State.

Therefore it was that I first offered the amendment that that should not be done unless a majority of the people in each of these Territories should so vote. When that amendment comes to be voted upon I sincerely hope it will be adopted; but, as I have said, I am going to address myself more particularly to the other amendment, which provides for the striking out of all that part of the bill which relates to the union of these Territories and proposes to substitute separate statehood for each.

I have said enough in objection to the force view or to any other kind of view. I want to address myself now to the question of their fitness for separate statehood. I spoke at length upon this subject on another occasion—in the Fifty-seventh Congress, I believe it was—and I know that Senators are familiar with the arguments. Therefore I want now to content myself simply with indicating them. In the first place, I think these Territories are entitled to separate statehood because each has a sufficient area. Nobody questions that. In New Mexico they have an area of 122,000 square miles. That is much larger than it should be for economical enjoyment of State government. In Arizona they have an area of 113,000 square miles. So the area of each, all will admit, is sufficient to entitle them to separate statehood.

Now, the question is as to population. We are told they have not sufficient population. I want to renew here the statement which I undertook to support with an argument when I addressed myself to the former statehood bill, that they have in these Territories a much larger population than has been found

in most of the Territories heretofore admitted to statehood at the time when they were admitted. I do not pretend to be exact, but I understand—and the Senator having this bill in charge will correct me if I am in error—that at the last election in New Mexico they registered more than 70,000 votes. That many were registered. I do not know just how many were cast. We all know that all those who are entitled to vote do not always register. How many did not register no one can tell. We can speculate about it, but it is certainly safe to assume that there are in New Mexico four persons for every registered voter. That of itself would make 280,000. There are probably 300,000 people, therefore, living in New Mexico.

We have had from the beginning of the Government two rules, and only two, that have been taken into consideration and given weight in determining whether a Territory applying for statehood has a sufficient population to justify admission. One is the rule originating with the provision of the ordinance of 1787, according to which provision any Territory would be entitled to statehood whenever it had residing within it 60,000 free inhabitants, and might be admitted before then if Congress, in its judgment, saw fit to admit it. Ohio, the first State admitted under that provision, was admitted when she had only forty-two or forty-three thousand people. Quite a number of other States to which that law applied have been admitted when they had less than 60,000 people. That law applied to all five of the States carved out of the Northwest Territory, and then by a subsequent act of Congress it was made to apply as organic law to all the territory of the United States south of the river Ohio, and later it was applied to Oregon. That rule was followed in the admission of States, and it was recognized as a binding moral obligation on Congress in every instance where a Territory to which the ordinance of 1787 had been applied as an organic law came knocking at the doors of Congress for statehood. Later we acquired the Louisiana purchase. In acquiring that territory nothing was said about how large a population, so far as the giving of statehood was concerned, a Territory should have before it should be admitted to statehood, but we did say the people residing in that Territory should be admitted to the Federal Union upon the principles of the American Constitution, or some such expression as that.

When we had acquired that territory and had created Territorial governments for different parts of it and those Territories for which we had provided Territorial governments asked to be admitted, the question arose whether or not they had a sufficient population. Our predecessors who considered that question came to the conclusion—and it has been the rule ever since and never departed from—that a Territory we have created, to which the ordinance of 1787 was not applied or to which this question of being admitted according to the principles of our Constitution applied, was entitled to such admission whenever it could say it had at the time a population equal to the unit of representation in the House. That unit has from time to time changed, but Arkansas, Nebraska, Kansas, and I do not know how many other States have been admitted, and in connection with the admission of every one of them that question was discussed, and no man ever denied that when they could show that they had a population as large as the unit of representation

there was a moral obligation resting on Congress to give them statehood.

Now, apply that rule to New Mexico. The ordinance of 1787 did not apply to that Territory, so that rule is not to be considered in this connection, but New Mexico came to us by virtue of the treaty with Mexico at the conclusion of the Mexican war. It was provided in that treaty that the people residing in the Territory so acquired should be admitted to the Union upon the principles of the Federal Constitution when Congress saw fit to act favorably.

I am not trying, as Senators will see, to quote the language exactly, but that is the effect of it. So the same rule, when applied to this Mexican territory, that was applied to the territory acquired as a part of the Louisiana purchase—that clause being contained in the treaty that the Congress should be the judge as to when this admission should take place—makes it, of course, competent for the Congress to postpone as long as it may seem fit to do so the admission of this Territory to statehood.

But the moral obligation remains just the same, and contemporaneous expressions in the messages of the President and in action taken by other officials in respect of this matter all show that it was the common expectation that that Territory would be admitted to statehood whenever it could comply with the requirements of the rule with which others had been compelled to comply.

Now, therefore, with that before us we come to consider whether or not the population of New Mexico is sufficient. I stated that it has at least 300,000 people. The unit of representation is now, I believe, a hundred and ninety-four thousand. So it has half more than enough to qualify it under that rule, and it seems to me that is enough to justify us in giving her statehood, and not only to justify us, but to make it our duty to give her statehood.

Ah, but somebody says the quality is objectionable. That has been intimated all through this debate. I do not have much patience with that suggestion. So far as the quality of the people of these two Territories is concerned, the committee that brought in this bill providing for the admission of two Territories as one State are estopped to say the quality is not satisfactory.

If they are not qualified separately so far as concerns the quality of citizenship, they can not possibly be qualified in union so far as citizenship is concerned. They have voted, and they ask you to vote in passing this measure, that the people residing in the Territories are qualified for statehood so far as the quality of citizenship is concerned.

But, Mr. President, suppose there are some bad people in those Territories. There may be. There doubtless are. We have them in every State of the Union. I read only last Friday morning, I believe it was, in the newspapers how a grand jury of twenty-four members, in the city of Philadelphia, brought in a charge in open court arraigning the municipal government of that great city for tolerating and protecting and encouraging every kind and class and quality of vice and immorality almost that you can name, and yet we know that the people of Philadelphia are among the very best people to be found anywhere in all America.

And only this morning I cut out of the papers—and I must use it while I think of it, for fear I may forget it—something about Illinois. I understand in Illinois it is thought the people of New Mexico are not of a quality that makes them acceptable as citizens of the Union. Listen to this:

Auctioned to the highest bidder are special privileges in Illinois legislature.

And so it goes on.

Then follows a long sensational account. I do not know whether there is any truth in it or not. I hope there is none. I do know that Illinois is one of the proudest States in the Union, and her people are an intelligent people and a moral people and a patriotic people and a people who have demonstrated their capacity for statehood. But nothing that has been said in this debate in the way of charges against the people residing in New Mexico more seriously compromises them than that which is said here about the people of Illinois, than that which was said in this return of the grand jury in the city of Philadelphia about the people of that city; and if I wanted to continue this kind of reference I might say something about Delaware having had a fair share of trouble recently.

Mr. HOPKINS. Mr. President—

The PRESIDING OFFICER (Mr. PENROSE in the chair). Does the Senator from Ohio yield to the Senator from Illinois?

Mr. FORAKER. Certainly.

Mr. HOPKINS. If the Senator will permit me, I desire to say, in respect to the newspaper clipping, that a charge of that nature was made by what is claimed to be an irresponsible party, and it was denied by every intelligent member of the legislature of Illinois, and that charge has met with universal condemnation, not only by the members of the legislature, but by the people of the State.

Mr. FORAKER. I did not expect the Senator from Illinois to admit the truth of this charge. I took good care to say that I hoped there was not any truth in it. I do not know anything about it. I only know that I found it in a newspaper and read it, and I think there is just as much truth in that, considering it false absolutely, as there is in many of the statements that have been made here about the people residing in New Mexico.

It is an easy thing to stand up here and say that the people of Arizona or the people of New Mexico are not qualified for statehood. The people of those Territories, under the most adverse and troublesome difficulties, have sustained their Territorial governments and have enacted laws for the past fifty years, not one single enactment of which the Congress, although having the power, has seen fit to repeal. Their administration of their domestic affairs, in so far as we have permitted them to control that administration, has been just as satisfactory as has been the administration by the officials of any State in this Union of their domestic affairs.

I do not want to be diverted from calling attention to another State. I am not asserting that any of these things are true, but if the people of these two Territories are to be held up here and to be criticised in the way they have been, I should have the right, speaking for them, to call attention to the fact not only that they have had trouble in Philadelphia and Illinois—of course, it is not true anywhere, but there have been charges



of trouble—but that they have had trouble in Delaware, they have had trouble in Colorado, and they have had a whole lot of trouble in Missouri. I do not believe the people of these Territories have ever been charged with anything so bad as Mr. Folk succeeded in convicting a lot of municipal officials of St. Louis of having done. I call attention to this only to show that it is an easy thing to make charges about this and that and the other thing which has been done by the people of these Territories.

But, notwithstanding these charges, the fact remains that they have successfully conducted their Territorial governments, that under the most adverse conditions they have prospered, they have developed their industries, they have multiplied their population, and they have come to the point now where they are entitled to statehood.

But we are told while they have a sufficient population to entitle them to statehood, yet they are not going to grow and multiply as to population as they have done in the Dakotas and in Nevada and a lot of other States that have been admitted into the Union. Of course I speak of Nevada in a facetious sense. I should recall the reference, because I see the Senator from Nevada is not in his seat.

Mr. STEWART. I am here.

Mr. FORAKER. Then I will let it stand, for it is a compliment to that State.

Mr. STEWART. A good many people say bad things of Nevada. I am glad the Senator from Ohio is not in that category.

Mr. FORAKER. No. It is true, as has been stated, that that population has grown only gradually and slowly in these Territories, but that is easily accounted for. Population grows along the lines of least resistance, like some other things do. Until a few years ago they were afflicted in New Mexico with a condition of things relating to titles to land which made it impossible to go there and acquire land with any assurance that you would get good title. It was known when we acquired New Mexico that the Spanish land grants overlapped each other and that as to the matter of title all was confusion and uncertainty, and that there was no safety in acquiring land. And yet it was not until 1891 that we established a court of private land claims and set it to work to quiet those titles, and it was only within the past two years, possibly within the last year, when that court concluded its labors, having untangled all that difficulty and having quieted the title to 30,000,000 acres and more of public lands in New Mexico; and since that time they have been making progress and the population has been growing more rapidly than ever before.

But another difficulty. We are told by the Senator from Minnesota [Mr. NELSON] that the Indians in New Mexico are a docile, quiet, good-natured lot of Indians, of whom nobody has any right to be afraid, and yet I remember that the Apaches inhabited New Mexico and that General Miles made himself quite famous in the military history of this country by capturing Geronimo there. No one wanted to live within hundreds of miles of where one of the most ferocious of all the Indian tribes our country has ever been infested with were in the habit of putting in an appearance. We did not give the people of



that Territory enough protection, and so it was easier to go in other directions than it was to go to that Territory.

Mr. BEVERIDGE. Mr. President!—

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Indiana?

Mr. FORAKER. I have but limited time, but I will yield.

Mr. BEVERIDGE. I wish to ask the Senator only a question about the Indian matter and the argument the Senator makes that the Indians scared away settlers. Does he think the Indians in New Mexico were any worse than the Sioux Indians who inhabited the Dakotas and all that territory, and does not the Senator recall the Indian wars and massacres in that western country, which did not keep out the inpouring population?

Mr. FORAKER. What I said was that we afforded less protection in New Mexico than we did in other places. We took less pains to protect the people there, to make it safe for people to go there. I said, when I made the remark, that population, like other things, flowed along the line of least resistance; that where there was the greatest inducement and where there was the greatest safety and where conditions were most inviting people would go.

I have said as much as I can in my limited time about the question of population, perhaps. What have these people accomplished? They have 300,000 people. They have now their titles settled. They have the Indians driven out. They have peace and security. They have schools established. They have their public buildings erected. They have their governments in successful operation, and the population is rapidly increasing. Railroads are being constructed. Within the last year more than 300 miles of railroad, I am told, have been constructed and put in operation in the Territory of New Mexico, and pretty nearly, if not quite, as much in Arizona. They have in that Territory now an aggregate wealth exceeding three hundred millions. The capital of their banks amounts to more than ten millions. They have represented in those two Territories almost every kind of industry that you will find represented in any of the older States. They have coal. They have copper. They have all the minerals, almost. Their aggregate output year by year is rapidly making them wealthy communities. And now irrigation is just being commenced, as the Senator from California [Mr. PERKINS] suggests to me, and as the result we can confidently hope for a much more rapid growth of population hereafter than we have witnessed heretofore.

But with that kind of people, with that kind of wealth, so that they can easily bear the burdens of government, I do not know of any reason why New Mexico should not have separate statehood, and there is no reason against Arizona having separate statehood, except only that she probably has not yet a population equal to the unit of representation. She has only about one hundred and fifty or one hundred and sixty thousand, whereas the unit of representation is a hundred and ninety-four thousand.

But we can do with Arizona as we have done heretofore with other States that had a less population than was equal to the unit of representation. If the Congress in its judgment shall see fit, that need not stand in the way. They have an aggregate of over three hundred millions of wealth. They have more than

ten millions of capital invested in banking. They have fifty or sixty newspapers, quite a number of them dailies. In New Mexico they have seventy-five newspapers, I believe, quite a number of which are dailies. They have good and acceptable school systems in both Territories. Their children are being educated. They are a moral, church-going people, and we know from the way in which they have conducted their government that they have the capacity for the administration satisfactorily of a State government.

We know, whatever else we may say about them, that they are a brave, patriotic, gallant people, who have never failed to respond, far beyond any quota they might be asked to fill, whenever there has been a call to arms.

Now, upon this whole subject the Senator from Connecticut [Mr. PLATT] spoke in the Wyoming case, and I want to call attention to what he said in that connection:

The Territory has every qualification for State government, if the precedents of the past are followed. The question of population has never cut much of a figure in the admission of States.

Now, Senators, I ask you to take note of that. It was the Senator from Connecticut [Mr. PLATT], one of the most careful and conservative members of this body, who made that statement and made it in his report from the committee. "The question of population has never cut much of a figure." He was speaking according to the precedents. The precedents fully warranted him in making that statement, for it is true, as I have already stated, that time and again we have admitted Territories to statehood where the ordinance of 1787 applied that had less than 60,000 free inhabitants, and we have admitted Territories to statehood where the ordinance of 1787 did not apply, but the rule as to unit of representation did apply, when those Territories had a less population than would equal the unit of representation. So it has never cut much of a figure. The Senator from Connecticut proceeds:

Illinois was admitted with 35,000 people.

It should have had 60,000, because it was under the ordinance of 1787.

Kansas, Nebraska, and Colorado each with less than 100,000.

Mr. President, having pointed out the conditions, having shown as well as I could, hurrying along in the way I have, that these Territories have sufficient population, sufficient area, that the quality of that population should be regarded as satisfactory, I want to speak to Senators a moment as to their duty with respect to these Territories, to grant them statehood at this time.

Is it not true that we have, by the precedents we have established, given a pledge to all who go out and live on the frontier, to make first settlements in these Territories, to organize Territorial governments, and develop industries, to fight the Indians and fight nature, that as a reward for it all we would, whenever they could comply with the rule we have usually followed, give them statehood? Is not that shown by our entire line of action on this subject?

The Senator from Connecticut [Mr. PLATT] spoke upon that subject. He said:

The welfare of the United States clearly requires the change of Territories to States at the earliest period when the population and re-

sources and prospects of a Territory are such as to insure a well-ordered, stable government by the people.

Does any man have any question but that they would have a well-ordered, stable government in New Mexico and Arizona if we would admit them both to statehood?

A Territorial condition is only permissible under our system while the new Territory is weak and sparsely inhabited, during which period it needs the sustaining and protecting power of the General Government. To keep a people in such Territorial condition beyond that period is unjust to the people and unworthy of the Government. States add to the dignity, the power, and honor of the Republic. Our system is a union of States, and the Territorial pupillage is only a stage of training necessary to precede the responsibilities of statehood, and to be dispensed with whenever the people of the Territory are fit to assume such responsibilities.

There is not anything said there about the population in point of numbers necessary to statehood. But what the Senator from Connecticut spoke about, and what I want to impress upon this body, is that when men go out, as the people residing in these Territories went, to build up these places on the frontier, to organize Territorial governments, they go having our promise, according to all precedents, that whenever they have the requisite population in number and quality and have enough wealth to establish and maintain a State government we will give them the reward of statehood. It is a duty we owe. It is a right to be expected at our hands.

The Senator from Connecticut also said that this Territorial condition was not a desirable one—not a desirable one to be continued indefinitely, so far as the people of the Territories were concerned; not a desirable one to be continued so far as the union of States is concerned; that statehood adds to the dignity and honor of the Republic; and our citizens, as fast as they are prepared for statehood, ought to be taken out of that condition of pupillage and be given the right to govern themselves. I want to read at some length what he said upon that subject:

The Territorial condition, aside from this question of right, is a condition of infancy, of pupillage. I was going to say of vassalage. If too long maintained, it is a position of vassalage. It is true that while the Territory is weak it needs the sustaining and protecting authority of Government—it needs the support of Government. It is like the child while under the power of the parent. Society has fixed a limit when that must end. In the case of the child, society says that it must end and the child must be an independent and free man at the age of 21. So a Territory in its condition of infancy needs to be protected and supported by the Government. It needs the strong arm of the Government. It needs its advice, as the child needs the advice of the father. It needs its laws, as the child needs the precept of the father. But it would be no more intolerable that the father should attempt to exercise his authority after the child arrived at the age when the common consent of mankind said that it was to be free and independent and to be emancipated from the power of the father than it is the Government to undertake to maintain the Territorial condition after the Territory has reached that point where it is entitled by all the rules and the history of this Government to admission into the Union. Whenever the Government compels a Territorial condition after that period, it governs the Territory as it would govern a colony. It is not self-government any longer. It is abhorrent to the principles of our Government, which are that the people shall all have a voice in saying what the Government of the people shall be.

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It is denying to them that principle which we insist upon as the right of man when we say that universal suffrage is to be the rule of this nation. It is taxation without representation. It is the same thing that the colonists fought against when we achieved our independence.

Are they not to be entitled to say as much as I who shall be the President who presides over the nation? That they may not say who shall be their governor, or their judges, and many other officers?

I read at great length from these very able remarks of the Senator from Connecticut because they have a direct application to this case. New Mexico has been in this state of pupilage now for more than fifty years; Arizona in a state of pupilage for more than forty years. They have built up in spite of all these adverse conditions, about which so much has been said here, splendid Territorial communities, splendid school systems, and they are rapidly making those people, if there ever was any just exception to be taken to them, as acceptable a class of people as can be found in any of the States. Certainly by their record no more serious charges can be made against them than can be made, as I have undertaken to point out, against some of the older States, acknowledged to be among the best States in the Union.

The Senator from Connecticut said when a Territory shall have reached that point it is the duty of the Government to give it statehood—to give it the right to govern itself.

In this connection I am reminded that the Senator from Minnesota [Mr. NELSON] in his very able argument took occasion to say that nobody there except two classes of promoters—political promoters and industrial promoters—wanted statehood, and that nobody should want statehood, because we are giving to them a good, acceptable government, with which they ought to be satisfied. Mr. President, the Senator from Connecticut made a conclusive answer to that. It is a right that every American has a right to aspire to, to be privileged to live under a government that will enable him to participate in the selection of a President and in the administration of the affairs of this great Republic. It is a right every American has a right to aspire to, to say who shall be the governor of his Territory or his State, to rule over him, and who shall be the judges before whom his causes, if he becomes a litigant, shall be tried. It is no little thing to deny that to a man, and it is contrary to the principles upon which we have always acted and to which we have always given force and effect when we could, to deny an American citizen any longer than is actually necessary participation in all these rights.

The Senator from Connecticut went on to say further:

I do not put it too strongly when I say that the American citizen has to restrain himself and withhold all the natural tendencies of his manhood when he submits to such a condition beyond the period when the Territory ought to be admitted as a State.

There is much more there I would be glad to read and would if I had more time, but I pass over much to read this:

All that the Anglo-Saxon holds dear to him in government is wanting in a Territorial government—

Was that true or not? We all know and feel that it was true. It was true as to the Dakotas, it is true as to New Mexico, and it is true as to Arizona.

Why, then, should these people be criticised for coming, as they have been coming year after year praying Congress to open the door and admit them to the Union of States? Why, when they come, should it be said that only a lot of political and industrial promoters are seeking statehood; that the great mass of the people are, in the first place, satisfied, and, in the second



place, if they are not satisfied they ought to be satisfied, for they are getting a better government, through the appointment by the President of governors and judges, than probably they will give to themselves?

Mr. President, they have not come as promoters, not in any improper spirit, but as the representatives, as I believe, of the whole people, possessed of the idea that they are entitled to this reward, and expecting Congress to deal justly by them. They have come because "all that they hold dear in government is wanting to them in a Territorial government." That is not my language, but I adopt it and most heartily approve of it. Then the Senator from Connecticut proceeds:

For until the Territory comes to that period when it is entitled to be admitted as a State it has no Magna Charta, no constitution, no election of executive or administrative officers. It is in vassalage, it is in a degraded condition. The wonder is that the people of this Territory have been so patient. Their very patience demonstrates their fitness for self government.

Now, I read further. This is a direct answer to what the Senator from Minnesota [Mr. NELSON] so forcibly said:

Are these people to be taunted with too much anxiety to be admitted?

That is what the Senator from Connecticut said of the people from Dakota who were asking for statehood.

Are they to be taunted with having framed a constitution before the Congress of the United States told them that they might frame a constitution? Are they to be held out of the Union because they have shown their anxiety to come in; to be clothed with all the privileges and dignity of other citizens; to stand here upright in their manhood, instead of bowing down in their vassalage, by adopting a constitution in advance of the permission of Congress?

They have not come here with a constitution already adopted. They have come here in the ordinary way. They have come here pointing to what they have accomplished, to their population, to their area, to their wealth, to their capacity for government—to the splendid record they have made in that respect, and they say to us, "According to all the precedents heretofore established we are entitled to admission to the Union when we have a population equal to the unit of representation; we have it; we have nearly enough for two Representatives." They have enough, I suppose, under the rule for two Representatives. Their population amounts to almost two units of full representation, and they now want just what the people of Dakota wanted, just what all the other people who have applied for admission to the Union wanted. They want the privilege of coming in as a State in order that they may then control, untrammelled by any power from the outside, their own domestic affairs, in order that they may legislate upon their own responsibility with respect to their domestic concerns, that their legislation may not be subjected to our supervision and our rejection, if we see fit to reject it, here in Washington, where we know but little of what the legislation should be in New Mexico or Arizona.

But I wish to quote from the Senator from Connecticut once more. It is one of the best speeches ever made in this body, and I want to put into the Record, as completely as I can, at least, all the points. Therefore I quote from it liberally. He said in that same speech what I now call attention to, and with it I shall conclude:

A Territorial government precedes and is in itself a pledge of statehood.



What I have been trying to prove.

When the time comes in the history of a Territory when the number and character of its people, its resources, and prospects of development are such as to satisfy Congress that statehood, if conferred, will result in wise and beneficent government, easily and gladly sustained, there should be no hesitation about admission.

There is nothing there, Mr. President, about density of population being the condition necessary to make applicable what I quoted in the opening sentences from the Senator from Connecticut in his speech in behalf of the Dakotas. Whenever there are enough people, and when that people have enough of capacity as shown by what they have accomplished, to administer a State government satisfactorily, and when they have enough of wealth to bear easily the burdens of State government, then it is the duty of Congress to give them statehood. We are not to wait until they have a million people; we are not to wait until we become satisfied that they will ever have a million people.

It is the opinion of the committee that Idaho fulfills these conditions.

I am now reading from what he said in favor of the admission of Idaho:

Its population, though it is now probably less than the unit of representation in the House of Representatives, is of a character that can be relied upon to maintain a State government according to its wisely guarded constitution. Its inhabitants, drawn chiefly from the older States, are imbued with a just idea of the duties and responsibilities of citizenship, and ardently desire an opportunity to exercise the same rights which as citizens they have hitherto enjoyed in those States.

Now, Mr. President, all that the Senator so well said in behalf of Idaho can be with equal propriety said of New Mexico and Arizona. Idaho, like Arizona, had a population somewhat less than the unit of representation, but the population was of such a character, of such quality, and the wealth they had accumulated was such in amount that nobody could have any question but there could be a satisfactory State government administered if we saw fit to allow them the privilege of having it.

Now, Mr. President, I see my time is about exhausted. For the reasons I have undertaken to give I am in favor of the admission of Oklahoma and Indian Territory as one State. I am in favor, at the same time, of the admission of New Mexico and Arizona as two States. I have prepared an amendment and I have offered it providing for the striking out of all contained in the bill in regard to New Mexico and Arizona and substituting separate statehood for those Territories. If that amendment should be rejected, if the Senate should refuse to strike out, then I appeal to Senators in a sense of justice toward these people, in a sense of fair dealing toward them, to adopt the other amendment giving to each Territory a right to vote separately and independently of the other on the question whether or not there shall be a union in statehood. It seems to me that that is the very least we can be expected to do; and I hope that no Senator will hesitate to vote for what is so manifestly just and so entirely proper, and without which, it seems to me, we would be perpetrating a great injustice little short of an outrage on the people of that Territory.

Mr. HANSBROUGH. Mr. President, I have only a minute or two—I should be glad if the Senator from Ohio would give me his attention. I wish to have read at the desk a letter which I

received from the Republican Territorial Committee of New Mexico. I know that the question now before the Senate is not a partisan question, but I think I should present the letter. I would be glad to have it read in connection with what the Senator from Ohio has said.

There being no objection, the letter was read, as follows:

REPUBLICAN CENTRAL COMMITTEE OF NEW MEXICO,  
Santa Fe, January 9, 1905.

Hon. H. C. HANSBROUGH,  
United States Senate, Washington, D. C.

MY DEAR SIR: On behalf of the Republican organization of this Territory I desire to solicit your valuable assistance toward the end that the pending Hamilton joint statehood bill in its present form be not passed. Our people are opposed to jointure with Arizona, and a constitution thereunder can not possibly pass by a vote of the people.

The public debt of Arizona is nearly four times that of New Mexico; we object to being curtailed in the matter of representation in the United States Senate, and think that if we are to be admitted we should be admitted singly, within our present boundaries and under our present name. The Territory which now comprises Arizona and New Mexico was divided in 1863 by Congress for the reason that it was considered too large to be under one Territorial government; it seems strange that after the growth we have attained since that time that Congress should now believe that we are too small for one State, when more than forty years ago we were considered too large for one Territory. There is nothing in common between the people of the two Territories, and no ties either—politically, socially, or commercially—which would tend to make a harmonious State, but on the contrary a deep rooted feeling existing with the people of each Territory which is antagonistic to each other, and any jointure would be repugnant to the people of both Territories. This question has been brought up in our Territorial conventions, and at the last election our Delegate to Congress was elected upon a specific declaration and pledge, which was mailed to every voter in the Territory, providing that the Republicans would favor statehood for New Mexico within her present boundaries. Our people all feel that you are one of the Territory's best friends in this matter, and we shall feel under additional obligations to you if you will use your good offices in our behalf at this time.

Very truly, yours,

H. O. BURSUM,  
Chairman Republican Territorial Central Committee.

February 7, 1905.

UNDER TEN-MINUTE RULE.

Mr. FORAKER. Mr. President, I wish to call attention to some figures in answer to what has been said in opposition to this amendment. I think they will answer conclusively every suggestion that has been made. Certainly they will if we are to pay any attention in taking present action to the precedents we have heretofore established.

There are in the Territory of New Mexico 300,000 people. I think I would be justified in saying 350,000 people, but certainly it is conservative to say 300,000 people. This people have produced wealth there to the amount of more than \$350,000,000. They have 3,000 miles of railroads constructed and in operation. They have more than \$10,000,000 invested as capital in banking institutions of the Territory. They have 75 newspapers. They have over 800 schools, in which their children are being educated. They own more than \$2,000,000 of school property. They have State universities, colleges, great normal institutions, and, as I have already indicated, one of the best school systems that can be found in any community in all this country.

They are making rapid progress. Their progress for a time was indeed slow. But the reason for that has already been pointed out. Not until within the last twenty-four months

have the titles to their lands been settled through the action of the Court of Private Land Claims which the Government established there some ten years ago. Now men are taking homesteads, building up farms, and engaging in other industries. Almost every vocation is well represented. They have not only agriculture and mining, but they have cattle raising, and nearly all of their territory is being employed in some useful way.

Now, as to the character of their people. It has been said that half of them speak only the Spanish language. That I think is an overstatement. About half of them, perhaps a little more than a majority, are Spanish-Americans, but the great body of Spanish-Americans understand the English language, and most of them who participate in public affairs speak the English language as well as the Spanish language.

The Senator from Wisconsin declined to read the list of names that had been sent him of members of the legislature in New Mexico, on the ground that he can not read the Spanish language. I have the same list here. Let me read it to the Senator and to the Senate, and see whether or not there is any difficulty either in pronouncing the names, as the Senator indicated there was, or in understanding that they have splendid capacity to legislate for their community and to legislate satisfactorily for the State if we give them statehood.

Col. J. F. Chaves, an American, a man who was a colonel in the civil war; Thomas Hughes, a scholar of fine attainments, the publisher and editor of the Daily Citizen, of Albuquerque, N. Mex.; George F. Albright, a scholar of high attainments, publisher and editor of the Daily Journal Democrat; W. H. Andrews, a miner and railroad builder, formerly of Pennsylvania; C. A. Spiess, a lawyer of considerable attainments, present district attorney for the fifth district of New Mexico; James S. Duncan, railroad and irrigation contractor and builder; Albert B. Fall, late associate justice of the supreme court of New Mexico, a lawyer of high attainments; W. A. Hawkins, a lawyer of exceptionally high standing; M. Martinez, ranchman and stock raiser, a good scholar and linguist; has had large experience as a legislator; a native of New Mexico; V. Jaramillo, ranchman and stock raiser, a young man of education and of high social attainments, a graduate of Notre Dame College, Indiana, a native of New Mexico; Amador Chavez, a native of New Mexico, ranchman and stock raiser, late Territorial superintendent of education, late mayor of the city of Santa Fe, and so on. I have read enough to give you a fair example of the composition of the legislature of New Mexico.

These are the men who are chosen to those responsible positions by the electors of New Mexico at their elections. Is it any wonder when we see the character of these men that it should be true, as has been stated in this debate, that after fifty years of legislation we can look back over the records and find not one single statute enacted in that Territory which the Congress of the United States, although having the power to do so, has ever seen fit to abrogate or modify in any particular whatever?

Now, as to interpreters; for I must hurry along. The same statement from which I have been reading shows that in only

six counties in New Mexico has it been necessary for some years past to use interpreters in courts. It is necessary to use an interpreter in the courts in Cincinnati, where I live. It is necessary to use an interpreter in the courts of Chicago, and it is necessary to use an interpreter to a greater or less extent in every other great city in this country where men of foreign birth come to testify or to appear as litigants. In New Mexico it is perhaps true in a greater degree, but the use of interpreters there is rapidly diminishing. For ten years last past they have scarcely used an interpreter at all in their legislature.

Now, as to the number of people. New Mexico has more than 300,000. Never since the beginning of our Government have 300,000 American citizens appealed in vain to the Congress of the United States for statehood save and except only in the case of New Mexico. It is a small electorate comparatively, but the National Legislature has never suffered because of the presence in it of representatives of small electorates.

Rhode Island, Delaware, Vermont, and New Hampshire, all small States in area and in population, have been referred to; but I need not stop to remind this body that they have ever been represented here and in the other House by men of high character and fine ability, men of probity, men of patriotism, men who have served their country well. And from the smallest of the States in the West have come men as to whom, no matter how much difference we might have in regard to public questions, there has never been any room to question their character or their ability or their worthiness to sit in this or any other legislative body in the country.

So it is, I apprehend, that if we are to follow precedent, as we should, we will admit New Mexico to separate statehood, as this amendment proposes, and I expect to see as a result of it a Commonwealth that will meet the just expectations of all who have the best interest of their country at heart.

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(From *The Washington Post*, Sunday, April 2, 1905.)

## Foraker's Star Ascending

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**His Prestige in Ohio Politics Was Founded on Four  
Gubernatorial Campaigns.**

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"Dead politically," said Ohio politicians of Joseph Benson Foraker, when they read the election returns for governor in November, 1889. A Democrat had defeated him, the third of that party since the civil war to reach the gubernatorial chair. Foraker had stood prominently forth with as devoted a following as magnetism, courage, and brilliant talents ever commanded in that State of fierce political contests. He had become undisputed master of the Republican organization, and was just closing his second term. There had been no breath of scandal in his administrations. He had displayed good executive abilities. He had a keen eye for capable men and was loyal to those who were loyal to him.

But Ohio set a seal of disapproval on third-term governors, and sent Foraker, with all his splendid official attainments, back to Cincinnati, to build up the most lucrative legal practice in the State. Incidentally, too, he was to discount the verdict of the politicians. He maintained himself as the organization's master for more than five years, till an Ohio President and an Ohio national chairman dispossessed him. Within three years he lost a seat in the United States Senate to John Sherman by only one vote; within seven years he was elected to the same body by the unanimous vote of his party. At the end of his term he was unanimously reelected. While he lost his prestige as a party leader, he did not lose his prestige as a Senator.



Today he is slowly but certainly recovering his mastery of the organization, and looming into prominence as a White House possibility. His star is rising higher. No one can dispute his title as the biggest man in Ohio, or as one of the big men of the country.

### DISTINCT STAGES IN HIS CAREER.

There have been three distinct stages in Senator Foraker's official career. He has risen to each quickly. The first was his election as judge of the Supreme Court of Cincinnati, in April, 1879, a little more than ten years after his admission to the bar in that city. The second was his election as governor. The third was his election to the United States Senate. There was an interval of a few years between each of those promotions.

Senator Foraker sprung from the soil. He was born on a farm near Rainsborough, about fifty miles from Cincinnati, in July 1846. When he came to attend school at Hillsboro, an adjacent town, he proved exceedingly bright in his classes. Although a slender lad, he had strength and physical endurance, and, his old classmates say, could soon lick any boy in the school. He enlisted with the Eighty-ninth Ohio volunteers nine days after his sixteenth birthday, and was one of the youngest soldiers from that State to follow the flag. In three years he rose to the rank of brevet captain. He went through the Atlanta campaign, and, when mustered out, was an aide-de-camp on the staff of Gen. Slocum. He participated in the battle of Bentonville, an incident of which Gen. W. T. Sherman related at an address to a reunion of the Army of the Tennessee during the 80's.

"Well, I remember you, my young friend or boy," said Gen. Sherman, turning to Gov. Foraker, "as you came through the pine woods that day on your horse covered with lather. You came up like a soldier and reported to me the message from your general, Slocum. A knight errant with steel cuirass, his lance in hand, was a beautiful thing, and you are his legitimate successor. I wish you all honor, all glory, all fame. I wish you may rise to the highest position this American people can give you."

## HIS RISE AS A CINCINNATI LAWYER.

Foraker fought his own way as a Cincinnati lawyer. He attended Cornell University, at Ithaca, N. Y., after the war, and was graduated there in 1869, having attained sufficient knowledge of the law to enable him to begin practice soon afterward. He cared little for politics in his younger years, and had no idea of ever seeking political office. When an opportunity opened for judicial preferment, he welcomed it as an honor belonging to the legal profession. As a judge he served with distinction. He gained a reputation for getting quickly at the point of a case. Although he reached his decisions quickly, often interrupting counsel to state that further arguments were unnecessary, his judgment was unerring. His law sound, and rarely were his decisions overruled by higher tribunals.

He continued as judge for three years, then resigning because of ill-health. There were many requests from prominent men of both parties, including Judge Hoadley, afterward his Democratic opponent for the governorship, that his resignation be not accepted. These were high testimonials to the character of his judicial services. He retired, however, in May, 1882, and, as soon as he recovered his health, resumed his practice.

Mr. Foraker received the first news of his boom for governor of Ohio one evening when riding home in a street car. He had purchased a paper, and, opening it, this big heading stared him in the face:

"Foraker for Governor."

## EMBARRASSED AT FIRST BLUSH.

It embarrassed him at first blush. He quickly folded the paper, as though fearing some fellow-passenger might discover him red-handed. He afterward described how a desire to see the dispatch soon made him bolder, and how he read it eagerly. It was from Columbus, suggesting that the former judge of the Superior Court in Cincinnati would be an admirable Republican candidate.

At the time he was a young man. It was just prior to the campaign of 1883, and his years were hardly thirty-seven. He had become the idol of a large following of young men. His career upon the bench had redounded to his credit. Indorsements of his judicial ability by leading men from the southern end of the State strengthened the sentiment for his nomination. The temperance question was then prominent in Ohio politics. The center of the agitation was in Hamilton County, where Foraker had long resided, it being the most populous center in Ohio.

Probably John Sherman, whose political interests subsequently conflicted more than once with those of the ex-judge, could have been nominated for governor that year had he desired it. Sherman had indicated his unwillingness to accept and Foraker's nomination followed. It was the first of four nominations for governor, which kept him prominently before the Buckeye voters for most of the decade between 1880 and 1890—a period when the fortunes of the Republican party were at low ebb over the country.

#### VOTED AT THE SAME BALLOT BOX.

Pitted against him in the first gubernatorial race was Judge George Hoadley, also of Cincinnati, who had served many years as a judge of the same Superior Court. They were neighbors and personal friends—resided in the same ward, and voted in the same precinct, and at the same ballot box. It was a hard-fought campaign, as all campaigns in Ohio are, and Hoadley won, becoming the second Democratic governor of Ohio since the civil war. A Democratic legislature was elected with him. The Republican slogan, with "Fighting Joe" Foraker as the candidate, was "vim, vigor and victory." Foraker, a dashing figure, furnished the vim and vigor, but his party could not give him votes enough for victory. It was in that campaign that Foraker declared he was "neither for nor against temperance."

Two years later the gubernatorial campaign was fought out on somewhat the same issues and with the same candidates for governor. The temperance issue was paramount. Hoadley

stood for personal liberty and against the Scott law, passed by a Republican legislature, authorizing local option, or, as the Democrats derisively termed it, "prohibition in spots."

The feature of that campaign, which made the present Senator governor of Ohio, was a joint debate. Mr. Foraker, young, magnetic and eloquent, issued the challenge at a meeting, held in Defiance, September 25. After a discussion of the liquor traffic, he was just taking his seat, when a former chairman of the Republican county executive committee, who had recently announced himself as a Prohibitionist, addressed several questions to him. He wished to know whether Foraker's position on local option and prohibition was that of the Republican party as reflected in the speeches of John Sherman, or that of State Chairman Asa S. Bushnell, as reflected in a letter to the prohibition candidate for governor.

### CHARGED HOADLEY AS THE AUTHOR.

Pulling from his pocket a list of the same interrogatories as had been propounded to him, Candidate Foraker declared that they had originated with his opponent, Governor Hoadley. His questioner admitted as much. Foraker then added:

"I here and now challenge Governor Hoadley to meet me anywhere in the State of Ohio at such time or times as our respective State committees may agree upon, to discuss all the questions involved in this contest. I desire that there shall be no misunderstanding about this matter. I therefore place no limitation on my challenge, except only that our discussion may be had prior to the election."

It was finally arranged that there should be a joint meeting at Wheeler's Opera House, in Toledo, October 8, and at Music Hall, in Cincinnati, October 10. There the two political gladiators met before audiences which filled the respective meeting places to the capacity. Hoadley opened at the Toledo meeting, speaking for an hour. Foraker followed, speaking an hour and a half, with Hoadley closing in a half-

hour speech. Foraker had the opening and the closing at Cincinnati.

The battle was a royal one from start to finish. Both were men of excellent mental equipment, familiar with party history and current politics. Foraker belabored Hoadley for his administration as governor, and Hoadley defended it ably. Even in those days gerrymandering had been reduced to a science, and the Democrats had a few specimens of their handiwork in the wards of Columbus. The Republicans in earlier days gerrymandered Columbus, and when Governor Hoadley was charged with what his party had done, he replied that the Democrats had redistricted the city simply to correct a great wrong.

#### AN ANECDOTE OF A CONSTITUTIONAL LIAR.

"This," said Mr. Foraker, in the course of his Toledo speech, "reminds me of the man who was reputed to be a constitutional liar. His habit of exaggeration became so great that one of his friends told him he ought to stop it. He replied:

"That is so. If I undertake to tell a story again, I want you to give me a little nudge, and I will quit. I am greatly obliged to you for protecting me from my weakness."

"Soon after this conversation they were traveling together and stopped at a hotel. As they sat in the barroom the gentleman said: 'Landlord, what on earth is this big house they are building back here on the road?'

"What house?" said the landlord. 'I don't know of any building there.'

"Why," responded the traveler, 'it is the greatest house I ever saw. It is 837 feet long (and here his friend gave him the promised nudge) and only a foot wide.'"

That was only one instance of the pointed illustrations which the rival candidates applied to each other, and yet without provoking much apparent ill feeling. The chief incident of the debate, however, arose from a statement by Governor Hoadley in the Toledo debate. A Connecticut man by birth, he had also formerly been a Republican. The



governor was, therefore, fond of declaring that the Republican party had degenerated, which was a reason for his leaving it. That year he had been accusing Foraker and the Republicans generally of dodging the temperance issue.

"In the days," said Hoadley, "when Salmon P. Chase, who died a Democrat, and Abraham Lincoln, who died a Democrat, and Charles Sumner, whose last wish was that the emblems of victory should be removed from our flag, and Horace Greeley, who died a Democrat, and a thousand other leaders of the Republican party, who came within the fold of the Democratic party before they died, were the leaders of that party, that party would never go before the people and present itself for their favor dodging an important issue."

Governor Hoadley's mistakes had become proverbial by that time in Ohio, and when Foraker's time came to reply, he observed to the accomplishment of thundering applause: "Another Hoadley mistake." Then he continued: "He gave us what was to me even surprising information. He told us Lincoln died a Democrat. I want to tell you that the mistake he made was that Lincoln died by the hand of a Democrat." (Terrific applause.)

A stormy scene followed over this retort. Hoadley denied having said that Lincoln died a Democrat. "I am sorry," said he sarcastically, "that Judge Foraker is growing deaf. I said Seward died a Democrat, and I will say that if Abraham Lincoln had lived six months longer he would have been driven out of his party as Seward was. I never heard J. Wilkes Booth called a Democrat before. He slaughtered the best man, the noblest, the truest spirit that this country ever had in the Presidential chair."

But the stenographer's notes were consulted, showing that Hoadley had said Lincoln had died a Democrat, and at Cincinnati he apologized, declaring that in the confusion he had said what he did not intend to say. The Cincinnati meeting was much interrupted, and at times it looked as though the orators would have to abandon their arguments. Quiet was

eventually restored by Foraker and Hoadley, arm in arm, advancing to the front of the platform and personally appealing for order.

## DUTIES OF AN OHIO GOVERNOR.

Tom Corwin used to say that the duties of the governor of Ohio consisted of granting pardons and signing commissions of notaries public. Until a year or two ago the governor had no veto power. Myron T. Herrick, the present incumbent of the office, is the first to exercise it under a constitutional amendment, adopted in 1903. Accordingly, when the great gubernatorial struggle of 1885 ended in a Republican victory, and Governor Foraker was inaugurated, he did not find arduous duties ahead of him. But he found enough to do to impress the people of Ohio that he was a very capable executive. He reorganized the State institutions, a work that had been started by his predecessor, but continued by him to the point that they came to be regarded as the models of their kind in the country. His appointments were of a very high class, and went far toward establishing his reputation as one of the very best governors the State ever had.

An incident of his administration that attracted wide attention was over the proposed return of captured Confederate flags. President Cleveland had expressed a desire that governors of various Northern States give back to the Southern States any such trophies of the civil war as remained in their possession. When this came to Governor Foraker's attention he remarked: "No rebel flags will be returned while I am governor of Ohio."

It was not intended as a statement of any particular significance further than expressing his opinion that the flags should not be sent back to the Southern States, but the remark got into the newspapers. In the inflamed condition of public sentiment on the question, it was taken up everywhere throughout the North and the South, and Governor Foraker discovered to his own surprise that his off-hand assertion had brought him nation-wide notoriety.

## TURNUED HER BACK ON THE OHIOANS.

Not long afterward he attended a Grand Army encampment at Philadelphia, where the veterans were reviewed by President Cleveland. As the Ohio veterans marched past the reviewing stand, Mrs. Cleveland turned her back to them, which was also much commented upon by the newspapers and periodicals at the time. Out of Governor Foraker's reference to the flags grew the pseudonym of "Fire Alarm" Foraker, which clung to him many years.

The defeat, following his fourth nomination for governor, was attributed almost solely to the popular aversion to a third term. The verdict has been accepted since then as final, and the Republicans have never attempted to nominate a governor for more than two successive terms.

From 1889 to 1892, over two years, Governor Foraker rested from his political achievements, and applied himself to the law. He left office a poor man. His success from that time was, however, quite as marked in his profession as it had been in politics. He had, since his admission to the bar, been a very close student, was an eloquent advocate, and enjoyed a wide acquaintance because of his service on the bench and as governor. It was, therefore, little surprise that he forged rapidly to the front, eminent and learned as were the members of the Ohio bar among whom he practiced.

The Republican legislature, chosen at the 1891 election, met early the following year. It had the choice of a United States Senator to succeed John Sherman, then serving his second consecutive term, following his retirement from the Treasury portfolio during the Hayes administration.

## SHERMAN AS HIS OPPONENT.

Sherman was a veteran in the Senate. He had been elected in all five times, three elections having covered the period from the beginning of the civil war up to March 4, 1877, when he resigned to enter the Cabinet, while there were still two years of an unexpired term. Sherman had

stated his intention of remaining away from Columbus and of allowing the legislature to make its own selection of Senator as it wished. Ex-Governor Foraker was known to have Senatorial ambitions, although counted as Sherman's friend. Yielding to his advisers, the latter eventually went to Columbus, lodged at the Neil House, a famous resort for politicians, just across the street from the capitol, and the evening of his arrival delivered a speech from the balcony.

Hastening up from Cincinnati, where he had learned of Senator Sherman's journey West for the purpose of participating in the fight, came the ex-governor. He was ready for the fray. Not long after Sherman delivered his speech from the balcony Foraker was in town. A dry goods box, dragged in front of the Neil House, sufficed for a platform. He remarked that the Senator had evidently changed his mind about coming to Columbus, and launched into an exceedingly bitter speech. It is said to have been one of the most eloquent of his entire career.

The political world of Columbus was stirred to its very foundation. The struggle for control of the caucus was renewed with energy, and with it originated the Republican factions, practically as they exist in Ohio to-day. The Sherman men forced a secret ballot in the caucus. When the count was made, Sherman was found to lead by one vote, which meant his re-election. Harry M. Daugherty, of Washington Court House, then a member of the legislature, voted for Sherman. It was claimed he had pledged himself to Foraker, whose staunch friend he had been. An estrangement resulted, and in recent years, after he had fallen out with the Hanna faction, Daugherty headed a faction of his own.

## HEALING OF FACTIONAL TROUBLES.

Once more Foraker returned to his Cincinnati law practice. For more than three years he continued at his profession, While McKinley was governor and also while McKinley was perfecting his plans to become President. The Republican convention of 1895 met at Zanesville with a

programme in view, calculated to heal all factional troubles in the party, and thus promote the McKinley boom. Senator Sherman was temporary chairman; ex-Governor Foraker was not only permanent chairman, but completely dominated the convention. Bushnell, a Foraker lieutenant, was nominated for governor. Foraker was given a unanimous indorsement for United States Senator to succeed Calvin S. Brice, Democrat, whose term was soon to expire. It was further agreed that McKinley should have the united support of Ohio Republicans for the furtherance of his ambition.

Foraker's sway in Ohio politics was never more complete than for a year and more after that Zanesville convention. But McKinley was nominated and elected as President in 1896. With Hanna as his chief lieutenant, the President became an antagonistic force in Buckeye politics. The breach was widened at the Toledo convention of 1897, where the McKinley people secured control and Charles L. Kurtz, of Cleveland, Foraker's friend, was removed from the chairmanship of the State committee.

As a power with the Ohio organization, Senator Foraker was henceforth obscured, and so remained, not only after the death of President McKinley, but till the death of Senator Hanna. As the friend and champion of President Roosevelt, he has regained much of his prestige over the old Hanna organization, but the lines are still closely drawn.

#### A NOTABLE CINCINNATI BANQUET.

His entry into public life as a United States Senator was duly celebrated by his Ohio friends. Senators are elected a year in advance by the Buckeye legislature, and February 22, 1896, a few weeks after the indorsement of the Zanesville convention was ratified by the legislature, a testimonial banquet was given in his honor at the Scottish Rite Cathedral by the leading Cincinnati citizens. It was a brilliant affair, a tribute of which any American official could be proud. Mayor John A. Caldwell presided, introducing the guest of honor in an eloquent speech as "at once the Richelieu and



Admirable Crichton of all that pertains to statecraft and politics." In concluding his tribute the mayor said:

"We know him as a practical man, who believes in practical politics; we know him to be a man of ideas and resources—one who never cries aloud in worship of an echo. We know him for what the whole country knows him, an able statesman, a brilliant orator, a profound thinker—but you and I, my hearers, also know him as a friend and neighbor. We know him as a father, and husband and brother, doing his part as only a loving, generous, manly, masterful man can do it.

"The great State of Ohio is proud of this younger son. She will see to it that his is no entailed estate. She has given him a United States Senatorship, but there is no greater, broader field of action and of usefulness that her admiring, patriotic people would not be happy to bestow upon him."

#### HAS LIVED UP TO FORMER UTTERANCES.

In his response Senator Foraker uttered sentiments which he has stood by during his term of service. "The time has come," said he, "when there is an emphatic demand for a wise, broad, patriotic, progressive American statesmanship. I do not like the idea of our being unable to step out at either our front door or back door, on the Atlantic or Pacific side, without seeing England's flag floating from all the islands that meet our view, with her guns pointing where-soever she will. When the Sandwich Islands come knocking at our door with a republican form of government and the American flag, I say let them in. When a civilized country turns war into barbarism, as Spain is doing in Cuba, I say, in the name of this republic and in the name of republican institutions everywhere, as well as in the name of civilization and Christianity, it is our mission to put a stop to it. And if, as a result, the Stars and Stripes should float over that island, it would be no bad acquisition."

These and other matters he discussed in that postprandial

effort of February 22, 1896, have figured in legislative proceedings since he took his seat as the colleague of John Sherman. His Senatorial record has been true in every particular to the utterances of that night. He worked for intervention in Cuba, on hostile grounds, as against intervention on neutral grounds, as was advocated by President McKinley. His resolution, with the addition of the Teller amendment, was the one adopted by the Senate and House, formally declaring this government's intentions.

## THE CONSTITUTION AND THE FLAG.

Within a short time after he became Senator, Mr. Foraker saw the Sandwich Islands annexed. For several years he has been chairman of the committee that shapes all Hawaiian legislation in the Senate. He has performed a similar office for Porto Rico, and framed the organic law for that island, also having championed the Porto Rican tariff act, which aroused great controversy, and had finally to be adjudicated by the Supreme Court. He was one of the very first to hold that the Constitution did not follow the flag. The correctness of his legal views on that and kindred questions were fully borne out by the highest court's decision.

No one can reasonably prophesy as to the nominee of the Republican National Convention of 1908. Popular favor is fickle. Men have risen from comparative obscurity to the White House in periods as brief as that between the present day and the next Presidential campaign. Garfield died at Elberon in September, 1881, probably without ever having heard the name of Grover Cleveland, who was elected for the succeeding term. When Garfield breathed his last, Cleveland was only mayor of Buffalo. But other Presidents have risen to the high official station by years of eminent public service.

If Senator Foraker wins the next nomination, his name will not be a strange one in the history of national conventions. He has been conspicuous in those great quadrennial

assemblies for more than twenty years. He presented Sherman for the nomination twice, first in the tumultuous convention of 1884, and again in 1888. Even then his own name was on many lips as a possible Presidential nominee. He has been a delegate-at-large from Ohio to every convention, beginning with 1884, till now a national convention would hardly seem complete without his presence as one of the Buckeye big four. First and last, he has held nearly every important convention office. He was chairman of the platform committee in 1892, and again in 1896. In 1900 he made the speech putting William McKinley's name in re-nomination.

### SUPERIOR AS A CAMPAIGN ORATOR.

As a campaign orator Mr. Foraker has few equals in the Republican party. He has stumped every Northern State east of the Missouri River. His presentation of the issues is always forceful and effective. His ability to stir an audience to enthusiasm is exceptional. In more recent campaigns he has been less eager to enter upon the hard work of touring. But once in the heat of the conflict, his old-time fire and dash appear. He spoke frequently in the last campaign, vindicating his reputation as a staunch supporter of President Roosevelt. Two of his best speeches were delivered at the Auditorium in Columbus, and at Music Hall in Cincinnati, well along in October. In them he arraigned the Democracy with characteristic eloquence. In his Columbus speech he alluded to Bryan's statement as being no longer the Moses but as the Aaron of the Democratic party, Parker, of course, being the Moses.

"So, now," said Senator Foraker, amid general laughter, "it is Moses Parker and Aaron Bryan. Well, when I read that I commenced to wonder what it all meant, for two names could hardly be selected so suggestive as the names of Moses and Aaron."

## A COUPLET FROM HIS BOYHOOD.

"We are all familiar with their Biblical history. I remember when I was a boy there was a rhyme :

"Then said Aaron to Moses,  
Let's cut off our noses—

And I wondered whether Mr. Bryan had that in mind." Applying this to the Democratic situation so happily that he kept his audience in a roar of laughter, the Senator observed that Moses never saw the Promised Land, and that when he came "down out of the mountain, as to the children of Israel, he discovered that Aaron had made a molten golden calf and was worshipping it."

Mr. Foraker is one of the hardest workers in the Senate. He rises early and retires late. He reads extensively, and is one of the best Latin and Greek scholars in public life. He likes fine horses. When he does not walk, an exercise to which he is devoted, he finds keen enjoyment in horse-back riding, or riding behind a well-matched span. But his time in Washington is largely occupied with work. Big States like Ohio give their Senators much to do. In spite of these great demands upon him, Mr. Foraker continues to give more attention to the practice of his legal profession than almost any other man in the Senate chamber.





THE UNITED STATES.

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SPEECH OF

SENATOR FORAKER

AT

The Twenty-Fifth Anniversary Dinner

OF

THE YOUNG REPUBLICANS

OF PHILADELPHIA

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Bellevue-Statford

*Saturday Evening, April 29, 1905.*

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Hon. Philip H. Johnson, President of the Club, at the conclusion of his address, said:

“I call upon Senator Foraker to respond to the first toast, The United States. He will incidentally say something about the United States, and tell us especially what he thinks of this Club.”

Mr. President and Gentlemen:—It does not make much difference what I say about the United States, so I do justice to the Young Republicans of Philadelphia; at least, I so imagine from the character of introduction I have received. (Applause.) I can in all truthfulness

say in answer to the suggestion of your President that I have the most exalted opinion of the Young Republicans of Philadelphia, especially as practical politicians, for almost every member I have been introduced to here tonight I have been told holds this, that or other office. (Laughter and applause.) But, my fellow-Republicans, speaking seriously, I do most heartily congratulate you that you are members of such a splendid organization as this. It is the best in Pennsylvania. (Applause.) I know it is, because your President has told me so. (Laughter.) An organization like this in the city of Philadelphia, where you can easily give more than a hundred thousand majority for the Republican ticket, and in the State of Pennsylvania, where it seems to be no trouble now to give more than five hundred thousand majority to the National Republican ticket, is one of which to be a member is, indeed, a matter of which you may well be proud. (Applause.)

But I did not come here to talk about the Young Republicans of Philadelphia, pleasing as that subject is to myself and pleasing as it is to your President.

I came—or suppose I did from the program that has been laid on the table before me—to talk to you about the United States. In the little time I have had to consider this sentiment I have tried to think of something that will be in keeping with the dignity of the subject, and the first thought that came into my mind was to congratulate you, my fellow-Republicans, upon the fact that you belong to a political party that is pretty tolerably well acquainted with the United States; (Applause) a political party that is on good terms with the United States; a political party that has done more than any other political organization this country has ever known to make the United States what it is here at home and abroad in its influence and power among the nations of the

earth. (Applause.) You know, having this knowledge, that it is impossible for me, within the limits of an after-dinner speech, to deal satisfactorily with so broad and so comprehensive a topic. It would require more time than it would be proper for me to take here this evening to tell the thrilling story, for thrilling it is when well told, of the mere territorial growth and expansion of the United States. How from the original States, of which you were one, we have grown until we have become this vast, imperial domain of territory that extends from ocean to ocean, and out into the oceans; adding the Louisiana Purchase, the Florida Purchase, adding Texas, the acquisitions from Mexico, Alaska, Hawaii, Guam, Porto Rico, and last of all, the Canal Zone, which means so much to the good name and the commerce of the United States.

I would be glad if I had time to speak to you of the moral growth of the United States. How since our government was organized we have improved our system of laws, legislating so as to extend the privileges and the rights of all classes until today we can justly say that the American citizen, in the presence of the laws of his country, stands on a higher plain than does the citizen or the subject of any other country in all the world. (Applause.)

And how delightful it would be to talk about our material growth. How we have increased in population; how we have developed our resources, multiplied our industries, increased our products, extended our commerce and augmented our wealth and our power and our influence until we are today in very truth at the head of all the nations of the world. (Applause.)

But there is no time for that, and I pass it all by that I may speak particularly in just a few sentences, for I cannot make any extended remarks to you, about an-

other development we have had which the Republican Party has a right to take some credit for, and that is the development of the constitutional power of the national government "to do things." (Applause.) I speak of this particularly because just here is found the basic difference between Democracy and Republicanism. We can do things; they cannot. We have been doing things; they have not. And the reason they have not been doing things, and we have, is found in the fact that in their cardinal principles and doctrines, as originally taught by Thomas Jefferson, they are committed to the ideas of States' rights and strict construction—ideas which compel them to minimize constantly the powers of the Federal government; while we take the broader and better idea, enunciated and taught by Alexander Hamilton, the first great Republican (cheers) that the Federal government has all the powers expressed in the Constitution and all the implied power necessary to the enjoyment and exercise of the expressed powers. As a result, we have been able to make acceptable response to the demands of exigencies as they have arisen. You will remember how, in the beginning, our Democratic friends could not find power in the Federal government to build a highway over which to carry the mails; no power in the Federal government, because it was not so written down there, to make internal improvements; and, General Stewart, you will remember how, when Abraham Lincoln came into power and the Southern States threatened to dissolve the Union, they claimed there was no power in the Constitution to save the Constitution; no power in the Union to preserve the Union; no power in the national government to put forth a paper currency and make it a legal tender, although the national life depended on it; and in these later years you have all seen how they could not find any power in

the Constitution to take territory away from a conquered foe, as we took territory from Spain, unless we intended to incorporate it into the Union and govern it according to the Constitution, just as you are governed here, no matter how unfit for such government the inhabitants of such territory might be. (Applause.) They have had similar trouble about the governments we have established for Porto Rico and the Philippines, and about almost every other important step we have taken. Just now their deep concern is because they can't find anything in the Constitution about San Domingo (Laughter and applause), nor about the Caribbean Sea. So it is, my fellow-Republicans, and that is the point I want to make with you, that our Democratic friends have gone forward from one disaster to another, simply because their conception of our Federal government is such that they give to it a belittling quantum of power that makes it impossible for it to meet the demands of great questions as they arise. (Applause.)

As a result when they get together, as they did a few days ago, to celebrate the anniversary of the birth of Thomas Jefferson, they have a rather doleful time of it. This year they had a celebration in New York of Jefferson's birthday, and another at the same time in Chicago. Those assembled at the two places were as hostile to each other politically as Democrats and Republicans could be expected to be (Laughter); for both, although differing radically, claimed to be true disciples of their great founder. But at neither place did they say anything about recent achievements of Democracy, nor did anybody quote anything from any Democrat of modern times. (Laughter.) When they spoke about Democratic achievements they had to go back to the days of Andrew Jackson and Thomas Jefferson; for since that time there has not been any Democrat from



whom they could quote a sentence that the American people or anybody else would approve today. Not a quotation from Cleveland, or Bryan, or Parker, or Tilden, or Hendricks, or Thurman, or any other great leader. This is a very significant fact.

It is different with us, because, as I stated to you a moment ago, we belong to a Party that does things. We know how to do things. That's our business (Applause), and it is all because we have that kind of conception of the Constitution and the Federal power. (Applause.)

Now, another thought. You have just had your State Convention, and I suppose you are going into another campaign, not with much apprehension, I imagine, as to the result, but, in so far as you will appeal to the people of this great Commonwealth to support the Republican cause again at the ballot-box, you will do it, not because of any of the magnificent achievements of the past. You will not ask anybody to vote the Republican ticket this year because of what Lincoln or Grant did, or Harrison or McKinley did, but because of what Roosevelt is doing today (tremendous applause); because of what the Republican Party is, and what the Republican Party proposes to do tomorrow and for the future. This is only another way of saying that we belong to a Party that has contributed, and is now contributing, not alone to the happiness of the American people, but to the true greatness of the government of the American people, for it is the proper interpretation of our organic law that makes it possible for the American people to be in the future, as they have been in the past, leaders among the nations of the earth. (Applause.)

And now, in conclusion, as we have settled troublesome questions in the past, so are we proceeding, without any misgivings whatever, to the consideration and

settlement of the new questions of the day. We are not going to have any trouble about San Domingo. We are going to build a canal across the Isthmus. We have already, by the acquisition of Hawaii, provided for the protection of the approach to it from the Pacific Coast, and we propose, the Democratic Party to the contrary notwithstanding, to control the Caribbean Sea and the approaches to it from the Atlantic Coast. In like manner we shall solve all the new domestic questions.

We will find a way consistent with honor and consistent with the prosperity of this country, and with the rights of all concerned, to control the trusts and to regulate interstate commerce, and also to regulate, in a proper way, to prevent all abuses that should be prevented, the railroads and every other agency that may be employed. (Applause.)

It is a great thing, my fellow Republicans, to belong to a Party that has such a record, such a present, such a future. I congratulate you that you are members of it. I do especially congratulate you that you are Republicans of Philadelphia and of the State of Pennsylvania. (Applause.)



ADDRESS  
OF  
SENATOR FORAKER  
AT  
ARLINGTON,  
MEMORIAL DAY, MAY 30, 1905.

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Fellow Comrades, Ladies and Gentlemen:

This day belongs to our soldier dead; not of one war, but of all our wars; and particularly here, in this cemetery, where on these shafts and stones we read names that illumine so many periods of our history.

But while it belongs to all who have at any time or place upheld the flag on land or on sea, yet it had its origin in the sorrow and gratitude that filled the heart of the Nation, as it emerged from the Civil War, stricken with grief, but crowned with glorious triumph.

For these reasons it is no disparagement of others to speak here to-day chiefly of that conflict; its character and results.

We have reached the time when this can be done dispassionately.

As the traveler sailing away from the land sees the shore, the trees, the houses, and the hills receding, blending and disappearing until only the mountain peaks are longer visible, so have the details and minor features of that great struggle blended and faded out of sight, leaving, as we look back to it across the forty years that have since elapsed, only those strong and commanding facts that have taken permanent places in history.

We no longer see regiments, brigades, divisions, corps, or even separate armies, but only one mighty and invincible host, wearing the blue and relentlessly pressing on and on, and ever onward, through success and adversity alike, from battlefield to battlefield, until, with waving flags, flashing sabres and gleaming bayonets, they marched home flushed with final victory.

It would be interesting and inspiring to recall that time and review in detail those days of sacrifice, of hardship, of battle, of death, of heroism, of patriotic devotion, of thrilling triumph; and here in this presence there comes an almost irresistible impulse to do so. But all that would be only repeating familiar history.

I shall, therefore, say but little in an abstract way of our heroes and their deeds of daring, that I may speak more fully of their great work.

As we behold the people of this land to-day all at peace, all prosperous, all happy, all imbued with love for our flag and our Government, it seems almost incredible that so recently we should or could have been distracted and brought to the very brink of destruction by one of the most ruthless wars of modern times.



## CAUSE OF CIVIL WAR.

It seems so strange and unnatural that we instinctively inquire, what was it all about? And what has happened that those who were at fatal war with each other should so soon become friends and be bound together in common interest and common aspirations.

It is unnecessary to trace the development or discuss the respective merits of the differences that made our country sectional and almost destroyed it. It is sufficient to recall the fact that, plainly stated, we had two questions about which we differed. One a moral question, and the other a legal question; one slavery, and the other secession; one appealing to the conscience and the other to the Constitution.

Both demanded settlement, but we strove to confine the war to the settlement of only one. Even Abraham Lincoln said he would save the Union with slavery if he could; without slavery if he must.

But on that basis we did not make much progress. So long as the war meant no more than whether a State had a right under the Constitution to secede from the Union and thus break up and destroy it, we did not get along very well.

Manassas, Balls Bluff, and other defeats and humiliations, one after another, overtook us, with only enough of success and victory interspersed to keep us from becoming utterly discouraged and abandoning the field.

Finally Lincoln saw, as in due time most men saw, that if the Union armies were to be successful the Union cause must be based on something broader and more important

than a cold legal proposition, important as that might be and was.

Our fathers of the Revolution commenced their struggle merely to redress grievances and enlarged their purpose to include and secure independence only when more than a year after Lexington and Concord they learned the necessity for a more inspiring cause.

In the same manner we learned and progressed. Not until after Antietam did the Nation see, appreciate and rise to its opportunity. Then it was the war for the preservation of the Union was placed on a basis that appealed to the moral sentiment of the people by the declaration that the bond should go free, thus striking at the root of all our differences and making it possible to conquer a lasting peace and establish a durable Union. From that moment the Union cause had a new strength and the Union soldier a new life. He marched with a firmer tread and held his musket with a more determined grasp. He felt that he was on God's side of the great contest, and that if he should be called upon to make the highest sacrifice it would at least not be made in vain.

It was a long, hard struggle. It cost hundreds of thousands of lives and hundreds of millions of treasure. It filled the land with mourning and piled up colossal burdens of debt, not only to creditors who took our securities, but to the pensioners who constitute the Nation's roll of honor.

It was a tremendous price to pay, greater than any language can adequately portray; but so too was the reward that followed.

## RESULTS.

When the smoke of battle cleared away it could be seen that not only was slavery gone forever, but that some things had been settled that it was of transcendant importance to have settled. In the first place, it was made plain that there was a right and a wrong side to the great controversy that had been so long in progress, and that the right side had triumphed and been vindicated. And that is as true to-day, and will be forever, as it was then. The fact that those who fought against the Government fought bravely and gallantly, and believed that they were right, does not change the fact that they were nevertheless in the wrong, and that their defeat was a blessing for them as well as for us and all concerned.

It was also settled that American heroism and valor were the same no matter under which flag displayed, for neither side could justly charge the other with any lack of these high qualities of vigorous manhood; and in this fact, that cost us so much at that time, was another blessing; for since then there has been profound mutual respect, where before there was so much lack of it as to make impossible any true feeling of real homogeneity.

It furthermore settled for all time to come that this is a Nation, not only in the sense that the Constitution is our supreme law, binding the States together in perpetual union, but also in the sense that our Government is invested with all the powers that properly belong to sovereignty.

If nothing more had been accomplished the victory would have been worth more than all it cost, but its value

is to be measured, not alone by what it secured, but also by what it prevented.

Defeat of the Union cause would have meant, not only two governments, but general disintegration, with corresponding sacrifice of that power, prosperity, prestige and greatness that a common country, a common flag, a common interest and a common destiny have brought us.

We know what the terms of peace were as Grant dictated them; but who can tell what they would have been had they been prescribed by Lee?

Where would he have run the boundary lines? How many States would have gone with the Southern Confederacy? and who would have stayed the spread of slavery? How many States would have remained to constitute the Union, if any at all? And how long would it have been until other secessions would have occurred? Who would have assumed the burdens of the public debt, and whose soldiers would have been pensioned? and who would have paid that obligation?

What indemnity would the South have exacted? and what kind of guarantees would she have imposed for the safety of her institutions and the preservation of her domination?

There is no end to the reasonable speculation that may be fairly indulged as to the ruinous consequences that would have followed if the result had been reversed.

In one sense such speculation may be idle, but not until we thus attempt to conjecture can we form any measure of the debt of gratitude we owe to the brave men whom we are here to honor.



But they accomplished more still; as already indicated, they not only prevented all the disasters suggested, and achieved for us the blessings of an indissoluble Union and universal freedom, but they freed us from the paralysis of the doctrines of States rights and strict construction, by which the power of the Federal Government was minimized to the point of helplessness to even save our national life, and gave it in turn that vitality, vigor and scope which belong to full national sovereignty. They made a reality of the belief in that respect of Alexander Hamilton and John Marshall, for, since Appomattox, what they taught has been fundamental truth, and we have been developing our constitutional powers until at last all recognize that our Government is as completely sovereign as any other, and that what others can do we can do, for we are equal in the family of nations to the strongest and the greatest.

Thus it was that we were able to intervene in Cuba and take there all the steps necessary to establish an independent government for another people; and by the same token we had the power, when necessity seemed to call for its exercise, to acquire our insular possessions, and, without incorporating them into the Union, hold them as dependencies to be governed by forms and laws and institutions suited to their conditions and requirements. The time was when the power to build the national road from Maryland to Ohio was challenged, but to-day no one doubts our power to construct a great international highway uniting the oceans and accommodating the commerce of the world.

And so might be specified a great chapter of achieve-



ments, both at home and abroad, of which all Americans are justly proud, for which it was denied that our Government had the requisite power until after these men fought and won.

With the Union preserved, slavery abolished, the Constitution amended, our finances rehabilitated, and this national idea fully developed and firmly established, our country entered upon a career of such unprecedented growth of strength and wealth and achievement that the spirit of sectionalism and the animosities of war have been literally drowned out by the ever-rising flood of a common pride in the greatness of a common country.

### RETURN OF THE FLAGS.

A striking evidence of this era of peace and good will was furnished when at the last session of the 58th Congress a joint resolution, authorizing the return to their respective States of the Confederate battle-flags, was passed by both Houses without debate and without a dissenting vote. The significance of this action was emphasized by the fact that there was a large Republican majority in each House, nearly all of whom were from the Northern and Union States, and among them many who had served in the Union Army, while the author of the resolution was a Democrat and an ex-Confederate soldier from Virginia. It was further emphasized by the fact that when eighteen years ago an executive order was issued, directing similar action, there was a protest against it so strong and determined in character that the order was reconsidered and revoked. It is only fair to say, however, that that oppo-

sition was due largely to the fact that there was then no law to authorize such an order and no circumstances to justify it as an executive act, and because the President, who made the order, had not sustained such a relation to the army that captured the flags as justified him in taking any unauthorized liberties with them.

Had the matter been presented to Congress then as it was later, it might not have been favorably considered, for it is probable that public opinion was not at that time ready to sanction such action, but undoubtedly the subject would have been regarded very differently and the disposition of it, whatever that disposition might have been, would have been unattended with any outburst of sectional spirit, because all would have recognized the right and competency of the Congress to deal with the subject as it saw fit, and because there never was in the hearts of the Union soldiers any hatred or ill will toward the men against whom they fought.

They did not fight the men of the South because they hated or despised them, or because they wanted to destroy them or their country, or because they wanted to subjugate or even humiliate them, but rather only because they loved them too much to allow them to separate from us and become a hostile people. They wanted them to remain in the Union where they belonged, because of what they could do for us and what we could do for them, in making this the freest and the greatest country of all the earth, and because of the ruin to both sections and the injury to the cause of free popular government that would necessarily have followed their success. While they were

uncompromisingly hostile to the cause they represented and were determined to overthrow and destroy it, yet for the men who represented that cause there never was a moment, even in the darkest days of the struggle, when they did not have for them personally a friendly regard and admiration that made base malice an utter impossibility.

This was impressively manifested by General Grant when in the very moment of his greatest triumph he told General Lee to have his men "keep their horses and take them home with them because they would need them to do the spring plowing with."

With these simple words he invited the whole country, victors and vanquished alike, to turn at once from war to peace—a sentiment that was shared by every true soldier of his command.

With human nature as it is it was not possible to immediately have anything like general accord with respect to even purely American questions. But it was only a short step from the state of mind indicated, if taken in a way and in a spirit that manifested proper regard for the patriotic sentiment of the country, to the state of mind that found expression in the joint resolution adopted by the Congress.

The Spanish-American war was attended with many good results, but one of the best was the impetus it gave to the restoration of cordial relations and the spirit of union and Americanism throughout the country. It gave the young men of the South an opportunity to put on the blue and show their loyalty and devotion to the flag, and

to win, as they did, a heroic share of the glory and greatness that were added to the Republic; while their representatives in public life distinguished themselves by the conspicuous and patriotic character of their utterances and services. What has followed is but the natural result, and every survivor of the Union Army should be profoundly thankful that his life has been spared to see such a complete vindication of all that for which he contended.

We are not only again one people, in the sense that we are again all Americans, but even party rancor and acrimony have largely passed away.

In the nature of things this cannot always continue.

Men will differ about important matters, and the right of great problems will not always be so plain as it now appears to have been with respect to the great problems that have been solved; but it is not likely that we are to have any new questions that will draw lines between the States and set one part of the country over against the other in even political array, much less in military conflict.

A last remnant of sectional difference yet remains with respect to the

### RACE PROBLEM,

but that has been finally dealt with, so far as national legislation is concerned.

Time, patience, patriotism and the education of experience may be necessary to practically, and in reality, secure to the black man, everywhere, all his legal rights and privileges, but his mental and moral growth give the highest assurance that he will eventually vindicate the statesmanship that made him a freeman and a citizen of the



Republic; while his loyalty and heroism as shown in every war in which we have allowed him to participate will win for him a triumph over all the prejudices that stand between him and the door of hope.

In this cemetery lie hundreds of his race who gallantly wore the uniform, as thousands are gallantly wearing it to-day, but nowhere, in all this broad land, can a single one be found, among either the living or the dead, who ever raised his hand against our flag.

It is not possible that in this country where there is such generous recognition of human rights such a race can fail to achieve success.

No man can do, or is doing, so much to accomplish this as the black man himself. Education, industry and frugality, with his other good qualities, will more and more command respect and secure advancement. His progress since emancipation has been phenomenal, and under all the circumstances he may well take courage for the future; while every comrade of the Union Army may be assured that what he did for that people was not done in vain.

We have other questions, and many of them, and always will have, for we are an active, energetic, progressive people, ever pressing forward to the accomplishment of some great purpose; but whether they are the labor questions, the trust questions, the control of corporations, the regulation of the railroads, the maintenance or the revision of our industrial policies, or something else, our differences with respect to them are not likely to be affected by State lines, and probably not seriously by party lines, as we have heretofore known them, for the indications are that as to



all these subjects a strong spirit of Americanism will determine what shall be done.

This is the most hopeful sign of the day.

Where genuine Americanism prevails there cannot be danger of any very widespread of populism, communism, anarchism, or any other heresy that would undermine and overthrow our institutions. Coupled with the saving common sense of the American people, which has never yet failed us, this national spirit is at once our greatest shield from harm and our greatest incentive to the highest and noblest endeavor.

It is no exaggeration, but only the sober truth, to say that we were never so strong, never so prosperous, never so contented, never so respected, never so powerful to do good in the world, and never doing so much good, either at home or abroad, as we are to-day. And great as is the present, greater by far, exceeding all power of description, is the career that lies before us.

### THE UNION SOLDIERS.

The men of other wars showed bravery, heroism and capacity for great deeds, and all added glory to our flag, honor to our name and renown to our arms, but no men since our independence was established have done so much for the American people as the men of the Union Army. They were mere boys, most of them yet in their teens, and all of the more than two millions who were enlisted, except less than 50,000, were under twenty-five years of age. But, measured by their work and its far-reaching consequences, they belong among the truly great men of history.

Through good report and bad, victory and defeat, summer and winter, sunshine and storm, they unflinchingly and uncomplainingly met every requirement of the great task that fell upon them. No hardship was too severe for them to undergo, no loss was too heavy for them to bear, no sacrifice of comfort, or blood, or life was too great for them to make. They laid all unsparingly upon their country's altar, and behold the result—this mighty Nation, so full of honor and so full of promise. Only the shortcomings of ourselves, or of those who are to come after us can bring their work to naught. Our presence here to-day is our pledge that it shall not fail through fault of ours, for we have come, not only to strew flowers on their graves, recount their deeds, extol their virtues, and pay tribute to their memory, but also that we may study the lessons they taught, and by these sacred and beautiful ceremonies consecrate ourselves anew to the great duty of perpetuating what they preserved. May God give us wisdom and courage to do our duty as well as they did theirs. If so, the Union they saved and the institutions they perfected will endure for long ages to come, and with the passing years bear ever-increasing blessings to humanity.





*(From The Washington Post, June 18, 1905.)*

# Foraker and His Early Struggles

By JAMES B. MORROW

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There is a story in every human life, and the character of the life is the quality of the story. Joseph Benson Foraker told his the other day, not that he wanted to, but that he yielded under the pressure of inquiry. He is a fighting man when combat is necessary, and that has been the essential attribute of his personal and public conduct.

The first battle, so far as the record goes, Foraker fought out with himself. It is a contest to which he never refers, and only got to the public through the long memory of a farmhand. Nor will it do him any good to say that he once wore a pair of trousers which in the first instance had been a huge coarse bag for green coffee. He was a small boy and couldn't help it. Besides, his father said the men of the farm were too busy to go to town for cloth. And his mother replied: "Never mind, my son, what the girls say: they will have forgotten all about it when you are a great man." So the trousers were a makeshift, and not one of the proud emblems of self-vaunted poverty. The battle was fought out as little Joe Foraker walked down the dusty road to school. He won. There have been many fights since, but with the other fellow.

Out in Ohio the savage old guards who have gone with Foraker to victory and the ditches, who have toiled at his side through their own blood and have always been fiercely



loyal—out in Ohio these men say that “Foraker will stand back no more.” He stood back, they assert, for John Sherman, and later for McKinley. Now they mean to make him President. And they are barbarians in a hand-to-hand fight.

I saw Senator Foraker in the library of his fine home, which was built in a street that runs straight away from the front door of the White House. Anyway, that is auspicious. He was reading James Anthony Froude’s “Life of Julius Caesar” and answering the telephone. More signs, and dramatically suggestive. In the flush vigor of his youth, Foraker was the most handsome politician in Ohio. Nose, eyes, chin, and head—all are fine even yet. He came and went in those days like a whirlwind, and behind were left Democracy’s fences flat on the ground and Republicans dancing and tingling in the joy of barbed phrases and the ecstasy of ferocious aggression. “And that,” Foraker would say, “walking to the edge of the platform aflame with zeal and tremendous eloquence, “is the truth with the bark on it.” The old men would stand up and shout, and the young ones would be temporarily insane. There is reason enough why Foraker is in the Senate.

But those are other times. The fire still burns, but not in the grass and undergrowth.

So I sought to get at Foraker’s inner life, to watch him grow, if I could persuade him to tell his story, from a boy in a coffee bag to one of the first men in the nation. Over and above his other achievements, he has made a fortune at the law. In reply to a question, he said:

“As a boy I wanted to be a lawyer, but the difficulties in the way seemed to be insurmountable. My father was a farmer in Highland County, Southern Ohio, and, while he was in comfortable circumstances, he had no money to give me, and the expense of an education looked very large in my eyes. I went to school three months every winter, and occasionally for a short time in the spring. I had to work, and so my schooling was practically confined to cold weather. I got all the books I could, and read whenever

I had any time of my own. My uncle was auditor of the county and lived at Hillsboro. My brother Burch had gone to clerk in his office. At the breaking out of the war Burch enlisted, and my uncle wrote that I might have his place. I was fifteen years old and a poor writer, but my father was willing to let me go and I took the opportunity. I saw well enough that I couldn't become a lawyer on the farm, and I thought something might occur if I went away that would help me. I started to work for my uncle in the fall, and in the following July, nine days past my sixteenth birthday, I enlisted in the army."

"What were the circumstances?"

"The station agent at Hillsboro, whose name was W. H. Glenn, was walking home with me from the Methodist Sunday-school and he told me that he had received a commission from the governor the day before to raise a company. I expressed some interest in the matter, and he asked me if I would like to enlist. I told Mr. Glenn that I would join his company. He said that he would come to the auditor's office early next morning and enlist me, which he did. I was the first man to be sworn into the company, and it was the first company of the Eighty-ninth Regiment of Ohio Infantry. Singularly enough, I was also the youngest as well as the first man in the regiment. And I was the last man to be mustered out at the end of the war, being on detached duty as aid-de-camp on General Slocum's staff and with him when my regiment left the service. I was mustered out in Washington in 1865 and took part in the grand review. I had served thirty-five months at the front."

"But you were much under age when you enlisted. How did you get around that?"

"The enlisting officer made an error in my age and put me on the roll as being eighteen. I had no part, however, in that mistake. I was a sturdy country boy and looked older than I was. While in camp three or four of us who were under age were told to chalk the figure eighteen on the soles of our shoes and to say that we were over eighteen if any one asked us questions. That was an old trick.

But no one made any inquiry of me and I didn't have to lie even technically. However, I was considerably alarmed when the mustering officer, coming down the line, stopped and took a look at me. I stood so erect, wanting to appear tall, that he said: 'Be careful, young man, or you will fall backward.' "

When Foraker was eighteen years old he was promoted to be a captain by brevet for gallantry on the field of action. A daring ride made him famous and gained for him the admiration of General Sherman. He tried to brush this incident aside in our conversation, but agreed to tell it briefly.

"We were moving toward Goldsboro, in North Carolina," he said. "Slocum was in two parallel lines on the left; Howard in two on the right. We were spread out along our front for thirty miles and had met with some resistance from the enemy's cavalry. One day there was more firing than usual at the head of our columns, and Major Tracy, now a lawyer in Syracuse, and I were sent to see what it meant. We found the enemy in a pine woods, a harassing party of cavalry, we thought, and our men went forward to drive them away. Tracy was wounded in the leg near the foot, and I sent him back. When I got into the woods, I saw, much to my surprise, a dead infantryman and another who had been wounded. Then I learned that Johnson, with 30,000 men was in front of us and ready for battle. We had stumbled against his army, and because of our scattered position, were in great peril. I galloped back to Slocum with the news. He told me to find Sherman, who was with Howard, and not to spare horse flesh. So I rode around the left flank of the enemy and did as I had been ordered."

Many years later General Sherman, at a reunion of the Army of the Tennessee, while making a speech, turned to Foraker, who was the governor of Ohio, and said: "Well I remember you, my young friend, or boy, as you came through the pine woods that day on your horse covered with lather, like a soldier knight, and reported to me the message from your general, Slocum." Re-inforcements

were hurried to Slocum, and the battle of Bentonville followed. Johnson lost 2,825 men and Slocum 1,646. The Confederates were beaten.

"When I came home I prepared for college at the Salem Academy in Ross County. I went to Ohio Wesleyan University at Delaware, until I became a junior, and then attended Cornell, where I was graduated in 1869 with the first class that came from that newly organized college. My purpose in going to Cornell was to come into some personal relation as a student with Andrew D. White, George William Curtis, Goldwin Smith, and Professor Agassiz. I didn't have enough money and my father loaned me some. In the meantime I had read all the law books which were required for admission to the bar, and had kept abreast of my classes. In the spring before I was graduated I was ill from overwork, and went home to be doctored. I was thinking about a place to practice law and visited Cincinnati. Some one said it was a big city and I would be lost there. I remember I replied: 'When you want to do business you must go where business is done.' But Cincinnati rather discouraged me at first. I walked through Third street and saw many buildings plastered with lawyers' signs. I asked a friend how many lawyers there were in the city, and he said there were 300. I thought that to be a tremendous oversupply of legal talent. I had my graduation thesis to write, and decided to make the lawyers of Cincinnati my subject. President White said the writing was good enough but he didn't like my topic. However, it was accepted. I was admitted to the bar in October, and soon began to practice, going into the office of Judge Sloane, who had come from my own county."

"Conditions have changed since then in your profession?"

"They have been almost revolutionary. We had no stenographers, no typewriters, no telephones, and not even an elevator, although we were in the best building in Cincinnati for lawyers. I can do more business in a day with

modern conveniences than Judge Sloane and his partner could do in a week."

"Do you remember your first fee?"

"Oh, yes. I spent four days in taking depositions, writing out all the questions and answers in long hand. My fees amounted to \$35. Collections were a considerable part of a lawyer's business. The commission for such work was 5 per cent. I earned \$600 the first year I was in Judge Sloane's office, and was told my income would be \$1,200 the second year by all the rules of common experience. I had fallen in love with Mrs. Foraker while we were students at Delaware, and I wanted to get married. The hope of \$1,200 for my second year—I had no money and nothing else but college debts—made me feel reasonably secure, and so we were married. I worked harder than ever and did more business, but my income in hand was only \$400. I had to sue in a good many cases and that kept me out of my fees until the cases were ended, some of which I had to carry to the supreme court. But after that I did better. The third year I earned \$1,100, the fourth \$2,700, and the fifth \$4,400. When I was elected judge of the superior court of Cincinnati, at the age of thirty-three, I was earning \$8,000. I gave up my growing practice for an office that paid me only \$5,000."

"Modern practice is unlike the practice of your first years in the profession?"

"The business of lawyers has greatly changed. When I came to the bar practically everything was decided by litigation. There was no other way of settlement. We went into court and fought it out. Now I rarely go to court, although my practice, of course, is much larger. The first object of the lawyer today is to expedite matters, to avoid the delays of long suits. This is done by bringing men together and coming to an agreement."

"Did you have politics in mind when you came to the bar?"

"I began my college career with a well-thought-out decision to become a lawyer and to let politics alone. I had



no desire for office. However, I was glad to be elected judge, because it was in line with my profession. Besides, it was a testimonial of confidence which I appreciated. I served on the bench for three years, and got into ill health. I resigned my office and went into the pine woods of Michigan. Lawyers in Cincinnati, among them Judge George Hoadley, against whom I afterward ran for governor, petitioned Governor Foster, who at a later day was Secretary of the Treasury in President Harrison's Cabinet, to decline my resignation. That was the first time I had been brought to the personal notice of Foster, who was then a powerful man in the Republican party of Ohio. When I returned from the Michigan forests I settled down in Cincinnati to continue my profession. The Republicans had passed laws against liquor and the Germans of Cincinnati had left the party. Without my knowledge, Foster and others, after inquiring into conditions, decided that I should be nominated for governor. I had no more thought of being governor of Ohio than I had of being Mikado of Japan. I had not been consulted, and all I knew about it I read in the newspapers. But the matter was not displeasing to me, and I was nominated. My doctor told me that I should make but two speeches a week. Before I knew it I was making an energetic stumping campaign, speaking day and night and traveling in every manner but on foot. Instead of injuring my health, I improved it. At the end of the campaign I was weary, but entirely well. I have electioneered in that way many times since, going into nearly all the States of the Union, and invariably with the same good physical results. The excitement, the change, the exercise, and the energy of a stumping tour are good for me. And so I have told you how I got into politics."

Waiting for the mood to work has been no part of Senator Foraker's plan of life. Industry, he says, is the base of success. Then comes aptitude for the thing in hand. Therefore, a politician, a public man, ought to have talent for public affairs. And he must expect all kinds of ups and downs. This year fortunate and esteemed; next year

beaten and condemned. Accordingly he must be cheerful and adaptable and be ready to fit himself into circumstances. Also he must learn to wait and always to remember that his own grievances are uninteresting to every one but himself.



# SPEECH OF SENATOR FORAKER

AT THE

## Republican Campaign Opening

AT

BELLEFONTAINE, OHIO,

September 23, 1905.

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FELLOW CITIZENS:

Before saying anything else, I want to congratulate Judge West upon the long life, bodily strength and extraordinary mental vigor with which he is blessed. It has been my fortune to know a good many remarkable men, but I have never known his equal for devotion to public interests, loyalty to Republican principles, and eloquent advocacy of all that is best in American life. His patience under affliction, his perseverance and his accomplishments have been an inspiration to thousands who hold him and his character in highest esteem and most grateful appreciation. I trust there may in store for him many additional years of life and that his last days may be his happiest and best.

I have noted with much satisfaction Governor Herrick's repeated announcements that he challenges and defies all critics and enemies of either himself or his administration, and that there is no charge against either that he is not ready, anxious and able to meet.

## HERRICK'S MANLY STAND.

That is a manly and fearless stand for him to take. It is worthy the Governor of a great State. Such a man does not need any special help or defense. He can be relied upon to take care not only of himself, but also of his assailants.

For this reason and because of his greater familiarity with such matters, I gladly leave to him, so far at least as this occasion is concerned, the discussion of State affairs.

I do this the more readily because I have entire confidence that investigation will disclose that the public institutions have been faithfully and economically conducted; that public funds have not been wasted; that tax burdens have not been made heavier than the public good has required, and that in all respects the State is in a healthy and prosperous condition.

In all these particulars Governor Herrick has been faithful, efficient and successful. It is for this reason that it will be a pleasure to him to render an account of his stewardship. Attacks upon him will but prove opportunities to set forth the excellence of his administration.

## NATIONAL AFFAIRS.

While Governor Herrick has been dealing with Ohio affairs it has been my fortune to be connected, in a humble way, as one of your representatives, with National legislation and National policies. These are not directly involved in the approaching election, but indirectly they will be importantly affected.

If Ohio should fail to give the usual Republican majority it would, in the absence of explanation, be an indication that the people are displeased with Republicanism, and that would have the double effect of discouraging Republicans and encouraging Democrats, not only in Ohio, but everywhere.

This is of itself a sufficient reason for the discussion of National politics in this campaign, but there is another and a more commanding reason therefor in the fact that the platforms of the parties adopted at their respective State conventions openly join issues on National questions.

#### MUST APPROVE ROOSEVELT.

Therefore, when we vote in November we must, whether we wish it so or not, cast our ballots for or against not only the record that has been made at Columbus, but also for or against the record that has been made at Washington—not only for or against Herrick, but also for or against Roosevelt.

In other words, the issue, and practically the only issue we have this year, is the Republican party versus the Democratic party.

It was in recognition of this fact that, with the President's hearty approval, Secretary Taft, Ohio's distinguished member of the Cabinet, was chosen to preside at the Republican State Convention that renominated Governor Herrick and there sounded the keynote for this campaign, proclaiming directly to the voters of Ohio not only the President's views on the public questions of the day, but also his keen personal interest in Governor Herrick, and all this is to be further emphasized by other political and personal representatives of the President hereafter coming into the State and participating in this contest.

#### REPUBLICAN DUTY.

In view of all this, it is the duty of Republicans to support the Republican ticket in Ohio this year without regard to the personnel of the candidates, for, whatever else may be true, they stand for Roosevelt and Republicanism, and that is enough.



It is not necessary to eulogize or defend either, but it is pleasant to note that even his political opponents recognize that the war lord of last year has become the peacemaker of the world, and that Republicanism was never so universally popular as it is today.

President Roosevelt has not only met the expectations and redeemed the promises of his party, but he has so far surpassed all expectations and pledges that the Democrats are proposing that he be made the candidate of both parties and be unanimously re-elected President in 1908. This is the most sensible proposition they have advanced in fifty years.

To praise such a man would be like tying ribbons to the sun. His achievements speak for him more eloquently than any language. He is easily the greatest and most popular figure of the world.

But why and how has he become such?

Because he has been a Republican, and has been able in a great and striking way to give application and direction to Republican principles and policies. All his tremendous energy, lofty ideas and patriotic impulses would have been so much useless waste of capital if he had been a Democrat.

#### THE DEMOCRATIC PARTY.

That party gives no opportunity to such a man. It affords nothing for him to work on or work with. It no longer has any vitalizing doctrines. Individual Democrats are as able and high-minded today as any of their great leaders of the past have been, but they have no unity of belief or purpose. Bryan preaches one kind of Democracy and Parker another, and the people have no use for either.

Our great victory of last year was due in part to the personal popularity of President Roosevelt and the still greater popularity of Republican policies, but more than all else to the utter lack of any common beliefs or common policies or

purposes of our opponents. They never were very well endowed with principles. In all their history they have had only four cardinal propositions: slavery, secession, free trade and free silver, and now these are all dead or disabled. Slavery and secession were slaughtered on the battlefield; free trade has been relegated to the rear by protection prosperity, and free silver perished at the ballot box.

#### AN OPPOSITION PARTY.

All the other issues they have from time to time attempted to make have been mere temporary expedients, born of a spirit of opposition to the party in power, and consequently passing away with the settlement of the questions that prompted them.

Such was the character of Democratic opposition to the policies of reconstruction, the establishment of the National banking system, the resumption of specie payments, the annexation of Hawaii, the acquisition of the Philippines, the Porto Rican tariff, the Panama Canal, the Santo Domingo treaty, and everything else they have made the mistake of opposing.

If it were not that an opposition party is a necessary factor in popular government, it would dissolve and pass out of existence. It seems on the verge of doing so anyhow. Surely there is nothing in the past to keep it alive and not very much in the present or the future. Such a party is incapable of dealing satisfactorily with the kind of questions that now confront us.

#### QUESTIONS OF THE DAY.

They are business questions and broad American questions. Democracy never seemed to have any faculty for either. Free trade rendered it incapable as to the one, and

its strict construction views of the constitution have made it helpless as to the other. They do not lack appreciation for prosperity, but they cannot have that and free trade also. They would like to uphold and advance American interests throughout the world, but their conception of our organic law paralyzes all such forms of patriotism.

Whether the time will ever come when it will be wise to restore that party to power will have to be answered by the developments of the future. Certain it is that this is not the time. It would be most unwise to intrust it with the solution of the questions with which we are now dealing. Consider their character.

#### THE PANAMA CANAL.

We have entered upon the construction of the Panama Canal. It is a majestic enterprise that will tax our capabilities to the utmost. We need for its successful prosecution the very best, wisest and most energetic management possible. There is no room in connection with such a work for narrow partisan politics. It is a great American and business undertaking, and must be conducted on the broadest and most patriotic lines.

The commissioners, the engineers and the other officials in charge of the work must be the best available. Nothing short of that will be satisfactory. With President Roosevelt and Secretary Taft in charge, we know the standard of efficiency will be the highest. It is not only a privilege, but a grave duty, also, to vote to keep it so.

#### THE PHILIPPINES.

We are in the Philippines, and we are there to stay. What we shall do there, and how we shall do it, is a great problem, worthy of the best thought and the highest quality of

American statesmanship. We have accomplished much, but much remains to be done. So far the record is highly creditable. It will improve as time passes and experience educates us to the requirements of the case. Our honor and good name, as well as great American interests, are at stake there.

The Republican party is familiar with the work. It takes a pride in it; it has its heart in it. This is no time to cast a ballot that might be interpreted as a vote of censure and coming change of official authority and power, with Mr. Bryan or any other Democrat at the helm.

#### THE TARIFF DEFICIT:

It is the same as to the domestic questions that are engaging our attention.

There is a large deficit in our revenues. It amounted to \$24,000,000 last year, and present indications are that it will be larger for the current year.

We must find a way to remedy this, but what shall it be? There is much difference of opinion on this point. Economy, reciprocity and tariff revision have all been suggested.

I don't pretend to know in advance exactly what will be done, but I have entire confidence that the Republican party will do the right thing at the right time, and that the Democratic party, if it had the opportunity, would do exactly the opposite.

When Congress meets the whole subject will be carefully considered in the proper committees, and then it will, no doubt, be elaborately debated in the two houses, and out of it all will come in due time the appropriate measure.

In advance of that action I can only make predictions as to what in my opinion is likely to be done or not done.

In the first place, whether the deficit continues or not, the strictest economy consistent with the public welfare will

government in making up the appropriation bills, but the country is growing and its demands upon the public treasury are so rapidly increasing that it is doubtful if entire relief can be secured merely by retrenchment.

#### RECIPROCITY TREATIES.

In the second place there can not be any reciprocity treaties considered by the Senate unless the President first negotiates them and sends them there. The initiative is with him. Until he acts nobody else can. Whether he is disposed to undertake to negotiate any such treaties with any other countries, and whether such other countries are willing to agree with him on provisions that he will be willing to accept and ask the Senate to ratify, I do not know and so far as I am aware nobody else knows.

But if he should find himself able to make such treaties the Senate, I am sure, would not ratify them unless it was found on examination of their provisions that they did not seriously injure any important American industry. The platform on which President Roosevelt was elected so declared, and I do not imagine he would disregard that declaration in negotiating such a treaty, and if he did I know the Senate would not ratify or approve his action in doing so.

In short, then, reciprocity should be confined to non-competing products and to such products as are able to stand a reduction of duties without injury to the industry that produces them. Each treaty must, therefore, be tried on its own merits, according to its own provisions, and for that reason no one can tell in advance what will be done in any particular case.

We have a high duty on wheat, corn, rye, oats, barley, potatoes, butter, eggs, milk, cattle, horses, sheep, hogs,



wool, hides and almost everything else the farmer produces.

I have no doubt but for a substantial reduction on these commodities, or some of them, a reciprocity treaty could be arranged with Mexico and with Great Britain as to Canada, and with still other countries; but I do not need to state, for everybody knows it without stating, that the farmers of Ohio and the whole country would be hostile to such a treaty.

In consideration of a substantial reduction of the duties on earthenware and china, or on glass and glassware, or on brick and tile, or on cotton manufactures, or on a hundred other articles that might be named, corresponding reductions can be secured, no doubt, from other countries of duties upon our products going there, but what would the American producers who would be affected say about it? What would become of the potteries at East Liverpool, the tile plants at Zanesville and the glass factories at Toledo and other places, and what would happen to the capital and labor employed there?

#### CAUSE TO COMPLAIN.

They would all have just cause to complain, for such a treaty would be their ruin, if the reduction should be enough to deprive them of needed protection in the conduct of their business, and if it should be less than that it is difficult to perceive how it could avail anything to increase our revenues or widen our markets.

If we are to sacrifice the protection of any one industry to secure larger markets abroad for some other kind of American products, it will be difficult to show why we should not dispense with protection as to all and thus go at once to free trade or a purely revenue tariff, the folly

of which has been demonstrated as often as the experiment has been tried.

The difficulty of agreeing about reciprocity in competing products was demonstrated when the recent Reciprocity Convention assembled in Chicago. The delegates were chiefly prominent business men, representing the different sections of the country and almost every kind of industry.

Every man of them was enthusiastically in favor of reciprocal treaties that reduced duties at the expense of somebody else, but all alike were opposed to all treaties that reduced duties on products that competed with their respective productions.

#### NO CHANGES LIKELY.

The result was a virtual abandonment of reciprocity, except in noncompetitive products, and the substitution of a proposition to have a maximum and a minimum tariff, which is not new, but has been under consideration in a tentative way for several years.

What will be ultimately decided upon with respect to it can not be foretold, but it can be regarded as settled that no important changes, if any at all, are likely to be made in the tariff by treaties of any kind; certainly not for the purpose of increasing the revenues, and that we must, in consequence, find some other way than by reciprocity to make up our deficit.

#### REVISION OF TARIFF.

Another remedy proposed for the deficit is by a revision of the tariff.

Sooner or later there will be revision, for the Republican party, while unalterably committed to protection, is not wedded to schedules and will not hesitate to make changes in rates when changed conditions make it proper to do so.

There are, no doubt, some duties that can be changed now with resulting benefit if nothing more were to be considered than the industries to be affected; but when we touch the tariff we touch the business of the whole country, and therefore should not enter upon such a work upon slight cause, but remembering that all existing conditions must be considered when any kind of tariff legislation is enacted.

A few years ago we had a surplus. Now we have a deficit. This must be taken into the account.

It is manifestly easier to get rid of a surplus by revision than to overcome a deficit. If we had a surplus of twenty-four millions, instead of a deficit of that amount, we could easily lop off that sum by transferring dutiable articles to the free list or by reducing rates not levied or longer needed for protection.

But I do not know how we are to materially increase the aggregate of our income by reducing duties, except on the theory that we will largely increase importations.

#### WILL SWELL IMPORTS.

In other words, if we try in that way to make up our deficit we will have to reduce duties to such an extent as to swell importations to an amount that will make up that sum at the lower rate.

Many are claiming that the iron and steel duties in particular should be reduced. So far as mere protection or mere revenue is concerned that may be true, but such a reduction, with a view to making up the deficit, is another matter. Take these articles for illustration.

The duty on pig iron is \$4 per ton, and on steel products \$7 per ton. If we should reduce these duties 50 per cent we would have to import enough pig iron under a duty of \$2 per ton, and enough steel at \$3.50 per ton, to make up the

revenue now derived from these sources and then in addition import enough more to make up the \$24,000,000 needed, and that, it is easily seen, would be an enormous quantity of each. Five million tons of pig iron, or almost one-third of all we produce, would yield a revenue of but \$10,000,000; and 4,000,000 tons of steel, almost one-third of our entire production, would yield but \$14,000,000.

#### DANGER TO INDUSTRIES.

That would practically make up the deficit, but does anybody need to be told that the result would work havoc and ruin to two of our greatest industries—to their plants and the capital and labor employed in them? Does any man, except a free trader, fail to see that the experiment would cost vastly more than it would come to?

It requires no special power of prevision to see that it would disrupt and demoralize, not only the iron and steel business, but all kinds of business the whole country over.

It would work the same injury, if not worse, to the farmers of the country if we should take their products for the experiment, since nothing could be accomplished in the direction of increasing revenues, except by an increase of the importation of the farm products of other countries, and nothing is plainer than that we can not strike such a blow at agriculture without destroying the prosperity of all other industries.

It is impossible on this occasion to enter into elaborate and detailed argument, but these mere suggestions are sufficient, I trust, to show the impossibility of increasing the revenues by reducing duties, and increasing importations without at the same time doing more harm than good; but that is exactly what the free-trade proclivities of our Democratic friends would impel them to do. Everybody knows this, and that is why the whole country takes fright

whenever an important Democratic victory happens to occur.

#### PROTECTIVE PRINCIPLE.

It is because of such considerations as these that the Republican party favors and will favor all advantageous reciprocity treaties that can be made without serious injury to any important American industry; but, on the other hand, will oppose any other kind, just as it has declared in its platform; and will not hesitate to revise the tariff schedules either upward or downward when there is just occasion to do so, but will not lower duties to increase revenues by stimulating importations, for it believes as firmly to-day as ever in its history in the great principle of protection on which the Morrill tariff, the McKinley tariff and the Dingley tariff were all alike founded, and under all of which alike prosperity was brought to the American people, but never such prosperity as we are blessed with at this particular time.

For the fiscal year ending June 30, 1905, our exports amounted to \$1,518,561,720 and our imports to \$1,117,512,629, leaving a net balance of trade in our favor of \$401,049,091.

For the past year our exports have increased over the preceding year \$57,734,449, while our imports have increased over those of the preceding year \$126,425,258.

These are eloquent figures. They show a healthy foreign trade. It would be hard to improve the situation they represent, but easy to destroy it. A long first step in that direction would be a Democratic victory in Ohio this year.

If other countries enter upon a tariff war with us, as has been threatened, we may have trouble to maintain and increase our markets as our rapidly increasing production demands, but it will only emphasize our need for the wis-



dom of the Republican party, which will prove equal to the task, as it has to all other tasks it has undertaken.

We have just reached the end of a tariff war with Russia, with the result that the United States has been completely vindicated both as to her legislation and her action under that legislation. We have done nothing and do not propose to do anything in the levying of tariff duties, except only that which is in accordance with the recognized rights of our Government to provide for the best interests of our people. No country has a right to complain of such a policy and no country will long persist in legislation that is based on a spirit of reprisal or punishment.

#### RAILROAD LEGISLATION.

Another domestic business question has arisen with respect to the railroads. It has been charged that freight rates are too high; that rebates are secretly given and that discriminations are practiced, and it is proposed that all these evils shall be cured by conferring the rate-making power on the Interstate Commerce Commission.

A great deal of testimony has been taken of shippers and railroad officials and experts, and many interesting and valuable statistics have been gathered.

From this evidence it appears that there are various kinds of practices and abuses that should be prohibited, and there will no doubt be legislation of that character at the approaching session of Congress, for there can be no question about the power or wisdom of appropriate regulation of the railroad business of the country. But it also appears that the United States is much more fortunate in her railways than any other country.

The following article, based on an official bulletin issued by the Department of Commerce and Labor, appeared in *The Cincinnati Enquirer* a few days ago:

"Compilations made from foreign and domestic statistics show a freight rate on English roads per mineral ton-mile of 1.93 cent. A ton-mile of merchandise or live stock costs 2.94 cents, and on all commodities an average of 2.32 cents. Against these the figures for the United States are startlingly small, being 0.58 cent. On German roads it is 1.42 cent, on French 1.55 cent, Austrian 1.16 cent and Hungarian 1.30 cent.

#### RATES IN ENGLAND.

England's passenger rates per mile, according to the business magazine, on the same classes as there cited for the United States, were 4 cents, Germany's 3.8 cents. For their average day's wages workmen can travel as follows: American 65 miles, British 35 miles, German 53 miles, French 40 miles, Belgian 36 miles, Italian 38 miles and East Indian 21 miles.

On American roads locomotive engineers average \$4 a day, England \$1.62, Belgian \$1.01; American firemen get \$2.28 a day, British 91 cents, Belgian 72 cents. Railroad laborers in the United States get from two to four times as much as on foreign roads. Forty per cent. of the gross earnings of American railroads goes to labor, while only 25 per cent. goes to capital. In England labor gets 27 per cent., capital 38 per cent.; in Germany the division is equal."

It will be noted that rates are much lower in this country than in any other, although labor and other costs of operation are much higher. Shippers and railroad men alike confirm these statistics by testifying that rates in this country are on the average as low as could be expected, especially for long distances.

#### QUESTION OF REBATES.

With rates not higher than what is reasonable and just under all circumstances shippers are next most concerned about rebates. Every man wants to know, and has a right

to know, that he is treated precisely as all his fellow-shippers are treated; that his competitors do not receive a preference that will enable them to undersell him and break him up and drive him out of business. For years the giving of such rebates was a common practice, resorted to by railroads in their competition with each other for freight traffic. Its unjust and ruinous consequences were universally felt.

To remedy this evil, with others, in February, 1903, the Congress passed what is commonly known as the Elkins law. The provisions of this measure were carefully considered and framed with a view to breaking up and destroying the whole rebate system, to the end that all shippers might enjoy the same rights and be treated with absolute equality in the use of the railroads of the country for interstate commerce.

It is very gratifying to be able now to state that railroad men and shippers alike testify with substantial unanimity that the law has been so successful in its operation that the granting of rebates has been practically discontinued, or that, if not wholly discontinued, the law has been found, by practical tests of its efficiency, to be ample, if properly enforced, to thoroughly accomplish its purpose.

#### DISCRIMINATIONS MADE.

The remaining ground of complaint is that discriminations are practiced.

There are so many forms of discrimination that this charge is a very broad and serious one. There may be discriminations between individuals, between commodities and between localities. They may be practiced by giving rebates, by classification, by false weights, by refusing or neglecting to furnish cars equally and alike to all shippers, by allowing terminal charges, elevator charges, or by

inequalities of rates as between different points, by charges for private cars, refrigerator cars, icing charges, etc.

The methods and devices resorted to are so numerous that it is almost impossible to enumerate them, but for every such discrimination, no matter how practiced, the law as it now stands was intended to provide a remedy.

The difficulty is not, therefore, with the spirit of the law, but with its text. The statutes applicable can be made much more explicit and effective, and as a result of the investigations that have been made and the consideration that has been given to this subject there will undoubtedly be appropriate legislation enacted at the next session of Congress to prohibit and punish in so far as it may be possible so to provide, all these discriminating abuses.

#### MANY ONLY APPARENT.

But the truth is that, while there are many kinds of discriminations to be complained of, there are, on the other hand, many alleged discriminations that investigation has shown are only apparent.

For instance, the rate on freight from New York to San Francisco is less than half what it is from New York to Denver and other intermediate places, practically only half the distance. By comparison this looks like willful discrimination and extortion as against these intermediate points, but it isn't.

There is a good reason for what at first thought seems so inexcusable.

It has been shown that the rates to these intermediate points do not yield to the railroads more than a fair return for the service rendered; that they are not only reasonable, measured by that standard, but that they are much lower than the rates charged for a similar service in any other country.

The explanation for the difference is in the fact that the through rates to San Francisco are unreasonably low, due to the fact that the shipper from New York has an option to ship by water, and the railroads must accept the low rates charged for water transportation for the through haul or else lose the business altogether, and they prefer, inasmuch as they must make the haul anyhow, to take the business at these low rates rather than lose it altogether, notwithstanding if they could not make up for it elsewhere they would be bankrupted.

#### CINCINNATI INSTANCE.

Cincinnati affords another illustration. That city is situated only about one-half the distance from Atlanta that New York is from Atlanta, yet New York has practically as low an all-rail rate to Atlanta as Cincinnati has, but why? Not because the railroads want to discriminate against Cincinnati, but because the New York shipper has the advantage of water transportation, with its low rates, for the greater part of the distance to the near-by points on the coast.

Illustrations might be multiplied almost without number to show that what appear to be discriminations are in many instances found on investigation to be due to the law of competition and the result of natural forces and conditions, over which neither Congress nor the railroads have any control.

There are, however, many cases for which there is no such excuse, and for which we must and will provide an effective remedy. But it does not follow that to remedy these abuses the rate-making power should be conferred on the Interstate Commerce Commission, as the Ohio Democratic platform of this year proposes.

I believe such a provision is unnecessary to correct the



evils complained of and that it would be both unwise and unjust.

The Interstate Commerce Commission is composed of five very capable, upright gentlemen, who have rendered good service, but neither they nor any other similar body, acting, as they must act, could satisfactorily discharge such a duty.

The Supreme Court said, as to the rate-making power, in what is known as the maximum rate case that, on account of

“the large amount of property invested in railroads, the various companies engaged therein, the thousands of miles of road, and the millions of tons of freight carried, the varying and diverse conditions attaching to such a right, is a power of supreme delicacy and importance.”

The rate making is probably the most complicated and difficult work connected with transportation. The railroads employ for this work the brightest and most skillful men they can find. These men command large salaries and earn them. Their work is of scientific character. It can not be done except by experts.

The railroad systems of the country have probably more than 5,000 in their employment to-day doing nothing else but making transportation rates for the traffic that is being hauled. Their work extends from ocean to ocean.

#### CONCERNS EVERY SECTION.

It embraces every section, every commodity, every condition, every classification. It is their business not only to make rates that will yield proper revenue to the railroads, but also from time to time so to reduce, alter and change rates as to develop the country through which the respective roads pass, encourage new industries along their lines, meet new competitors that come into their territory.

and from year to year, and month to month, and week to week, and day to day, and almost hour to hour meet the ever rapidly changing conditions that are brought about through the natural operation of the forces of trade and commerce.

They must, of necessity, meet as nearly as possible the requirements of their patrons. They must, therefore, not only make rates as low as justice to the railroads will allow, but they must make them interdependent, so that shippers can with facility send their products throughout the whole country.

A better way may be found of making these rates than that which is now in vogue, but I do not believe it possible for Congress to provide it by entrusting such a complicated, delicate and vitally important duty to any such agency of its creation as is that which has been proposed.

There are serious legal questions involved in such a proposition. There are numerous difficulties of a practical character that must arise the moment the Government undertakes such a duty.

It is impossible on this occasion to take up these objections in detail. I content myself, therefore, with one or two general observations.

#### FREIGHT BUSINESS DOUBLED.

During the last eight years the freight business of the country has doubled in volume. In consequence there has been and is now a congested condition everywhere with respect to the transportation of freight, and the railroads in consequence have been driven to the necessity of lowering grades, straightening curves, enlarging tunnels, strengthening bridges, multiplying equipment and increasing motive power to enable them to meet the demands upon them of the business of the country.

For improvements of this character they are shown to have expended during the last eight years the enormous sum of \$1,500,000,000.

From one end of the land to the other this kind of work is now in progress. If this increase of business continues for eight years more at the same rate of progression, and the indications are that it will, it will be impossible for the railroads to handle it, unless in the meantime, in addition to the general improvements mentioned, they double and quadruple their main lines, or double and quadruple their existing tracks and equipment.

#### OF VITAL INTEREST.

In this work we are all vitally interested. We want it to go forward without let or hindrance, to the end that business may be conveniently and economically transacted, and also and especially that there may be the greatest possible safety for life and limb to the millions who travel. We should take heed, therefore, that we do not destroy or impair the enterprise or the credit and financial ability of the railroads to raise and expend, in the way indicated, the hundreds of millions necessary to carry forward this great work.

To take control of the rate-making power is to take charge of the revenue of the roads, and that means that the Government is to assume the responsibility, not only of determining what rates shall be charged, but also of necessity how much money a railroad shall be allowed to make, and thus determine, also, of necessity, what improvements it shall be permitted to make, what extensions it may build, what equipment it must provide, what new tracks it may lay and what kind of service it shall render, for rates are so interdependent that there is no such thing possible as changing one without affecting many.

## DELUSION IS REFUTED.

Any other notion is a delusion refuted by conditions and experience. In short, if the Government is to determine how much money a railroad shall be allowed to make it must of necessity determine, also, what expenditures shall be permitted. None of these things can be escaped and none of them can be done by the Government so well as they are now being done by the companies themselves.

Such has been the experience of every country that has undertaken such a task, and will be ours also under similar circumstances.

The time was, and not very long ago, when it was a maxim recognized and advocated by all political parties, but especially by the Democratic party, that that country was best governed that was least governed. Now the tendency seems to be in the opposite direction; for every ill, real or imaginary, from which we may suffer, governmental relief or control is sought. Much good has been accomplished in this way, but the pendulum should not be allowed to swing too far.

Liberty of trade and commerce is the life that imparts competition and secures a healthy and vigorous development of our resources. If it be unduly hampered and restricted greater evils will result than any we are striving to escape.

## REPUBLICANS KNOW DUTY.

At another time I shall pursue this subject further. My only purpose now is to indicate the serious character of what is proposed and the necessity for the most intelligent and considerate solution of the difficult problem.

The Republican party is alive to its duty in this respect and will not desist from its efforts until it has worked out the best possible results.

We have 212,000 miles of railroads in the United States, and they have issued for their construction, equipment, improvement and maintenance \$16,000,000,000 in round numbers of railroad bonds, stocks and other securities, most of which are now held by our own citizens.

All classes of people and all kinds of business are interested in the subject and will be affected, favorably or unfavorably, by whatever may be done. A false step might work the most serious injury to the country's welfare and the people's prosperity.

It is not necessary to say that the Democratic party is incapable of satisfactorily dealing with such a complicated and difficult problem, because it is sufficient for present purposes and more agreeable, to say only that the Republican party is far better qualified for this most important work.

If this be true we shall prove unfaithful to ourselves if we do not continue it in power, for it is our duty to all interests involved and to the country as a whole to choose at this time, as well as at other times, the most acceptable agency that can be secured for the administration of our public affairs."





STENOGRAPHIC REPORT OF SPEECH  
OF  
SENATOR FORAKER  
AT THE  
Republican Campaign Opening  
AT BELLEFONTAINE, OHIO,  
September 23, 1905.

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MR. CHAIRMAN AND FELLOW-CITIZENS:

As I follow Vice-President Fairbanks and Governor Herrick on this platform, so shall I try to follow the examples they have set. Governor Herrick commenced by saying he would cut out one-half the speech he had prepared. That remark reminded me of the story someone told of the "Immortal" J. N. Free. He once stopped at the Burnet House, in Cincinnati. The next morning, when he was about to leave, the clerk asked him to pay his bill. In his characteristic way he refused, saying he never paid any bills. When the clerk found what kind of a character he had to deal with, he offered to throw off one-half, but the "Immortal" said: "I never allow anybody to beat me. I will throw off the other half." (Laughter.) Governor Herrick has cut out one-half his speech. I will do better. I will cut out all of mine. (Cries of "No, No.") Do not be alarmed. I am going to talk to you all the same. I meant I would cut out the speech that was sent to the newspapers. You can read that tomorrow. I shall utilize the few minutes that it will

be my privilege to talk to you in giving expression to whatever comes into my mind while I stand here.

But Senator Fairbanks set an example that I also want to follow. I should have said Vice-President Fairbanks. I have been calling him Senator Fairbanks for the last eight years, and it is hard for me to get accustomed to his new title. I want to follow his example in speaking a word of compliment and tribute to the greatest of your fellow-townsmen, Judge William H. West. (Applause.) I have met a good many remarkable men in my time, but I never knew his equal. (Applause.) A loyal, faithful, devoted Republican under all circumstances; a man of the most wonderful patience under affliction; a man who represents in his character and in his daily life the very highest type of American citizenship. I congratulate him that he has reached his advanced age with the bodily strength and the mental vigor that he enjoys. He is here on this platform today, a living testimony of the faith that is in him and of the interest he has in the success of Republicanism in Ohio at the approaching election. (Applause.) I hope there may be in store for him many long years of life and health and happiness, and that his last days may be his best.

Now let me say something about this campaign. The Vice-President closed his remarks by saying that in view of what he witnesses here today in Bellefontaine, at this Republican campaign opening, he knows that Governor Myron T. Herrick will be re-elected by an overwhelming majority. (Applause.) I too know it, not alone from what I see before me, but I know it also because of the telegram I hold in my hand. As you are aware, there is another campaign opening today at Newark, Ohio, where our Democratic friends are assembled. This telegram is from there. It was sent to Governor Herrick, and I have been asked to read it. It says: "This is a miserable frost. Not nearly a thousand strangers in town. It is really pitiable."

This great enthusiastic demonstration is a testimonial to the interest of the people of Ohio in the cause of Republicanism, and presages victory in November; while the demonstration at Newark is but another indication of what of late years invariably happens to our Democratic friends on election day. (Applause.)

I do not suppose anybody would expect me to talk about State affairs here this afternoon even if the hour were not so late as it is. But however that may be, I want to say to you that since I listened to the speech of Governor Herrick I know it is not necessary for me or anybody else to talk about State affairs. He can do that himself. (Applause.) He did it here this afternoon in one of the best speeches I ever heard from any platform in Ohio. (Applause.) I liked all he said, but one thing particularly well, and that was that there is not one single act of his administration that he does not want the people of Ohio to know all about, and that he is ready, anxious and willing to meet the people of Ohio face to face and give the fullest account of his stewardship. (Applause.)

I like that kind of pluck. That is a brave, manly stand for him to take, and you can depend on it that he does not need any help from me or anybody else. I predict that he will take care of Perley Baker and all others who may attack him. (Applause.)

I turn away from State affairs all the more willingly since I heard his speech, because it shows that during his administration there has been fidelity in the administration of his public trust. There have been no unnecessary burdens put upon the people. As he well said, no scandals have been connected with the administration of any of the public institutions of the State; no money has been wasted; everything has been accounted for, and the State is more prosperous today than ever before in our history. That is

a good record, and it is no wonder that he is both ready and able to defend it.

Now a word about national affairs. Let me commence with the election of last year. We had one. It was almost unanimous. It put Theodore Roosevelt in the White House for four years more, and that seems to have pleased everybody. Our Democratic friends are already proposing that in 1908 both parties nominate him and re-elect him unanimously. (Applause.) That is the most sensible proposition they have advanced in fifty years. Do not think because of that remark that I am committing myself to that proposition. (Laughter.) I have too much regard for the interests of Vice-President Fairbanks to shut the door in any such way on his ambition. No, Mr. Vice-President, in 1908 we will give a square deal to everybody. (Applause.) But, my fellow-citizens, that was a remarkable election. You know what happened to Roosevelt. But have you ever thought what happened to Judge Parker? (Laughter.) Probably not. Nobody seems to think much about him. You never heard of him until six months before he was nominated and nobody has heard of him since six months after the election. And yet he has one great distinction to boast of. It reminds me of a story they tell of two Irishmen who were blasting. Through a miss lick or miscalculation of some kind there was a premature explosion, and they were blown high into the air. When they came down they were picked up and looked over and found to be mortally wounded. One of the friends said to Casey: "I am sorry to tell you so, but you are worse hurt probably than you are aware of. We are of the opinion you cannot live but a very short time. It has occurred to me that you might possibly like to send some message to your wife and children. If so, I will be glad to carry it." The poor fellow thought a minute and then in his pain and misery said: "Yes, if it's so bad as that I would like for you to tell my



wife one thing." "What is that? I will gladly tell her." "Why, tell her, please, that I went higher than Finnigan." (Laughter.) That was the one thing he could boast of. It is the same with Parker. He went higher than Bryan. (Laughter.) He went higher, fell farther, hit harder and was killed deader than any other man who ever ran for the Presidency. (Laughter.)

Why was it, my fellow-citizens, that we had such a tremendous victory last year? There were three great causes. In the first place, a tremendous factor in our favor was the personal popularity of President Roosevelt; a greater factor still was the popularity of Republican policies, but the third factor was the utter lack of anything whatever to commend either Parker or the Democratic Party to the confidence of the American people. (Applause.) Individual Democrats are as good as any other kind of individual citizens. They are as honest; they are as patriotic and they have as much ability in an individual and private way, but as a Party they lack consistency. Nobody can tell from what they are this year what they will be next year. They have as many issues as there are campaigns. Last year they were everywhere criticising Roosevelt as a War-lord, who carried a big stick and who was a menace to the peace of the world. Now they concede that he is the peacemaker of the world, and that instead of a big stick he is carrying a turtle-dove. (Applause.) But they never see these excellencies in a man until it is too late for them to support him. They should have known last year that he was a peacemaker and not a disturber of the peace. But, speaking of his part in making peace between Russia and Japan, it was a great achievement. It brought great credit to the American name and nation. It was a blessing to the whole world and we are all thankful that the bloody war between Russia and Japan is ended. I shall always feel, however, that President Roosevelt's intervention deprived us of a most interest-

ing event which was about to happen under the management of Oyama and Lineovitch. I would have been glad to see how one more round would have come out. (Applause.) But that has all gone by, and I hope the Russians and Japs and everybody else will continue in peace.

Recurring now to our Democratic friends, I do not want to say anything disagreeable about them. They are in pretty hard lines. The trouble is they do not know exactly what Democracy stands for. It once meant slavery and secession, but these ideas perished on the battlefield. At one time they were open advocates of free trade and would be again perhaps under favorable circumstances, but just now free trade has been smothered out under protection prosperity. Only a few years ago they were enthusiastic for free silver, but that perished at the ballot box. What they are today they differ about among themselves. Judge Parker preaches one thing and Mr. Bryan another, and the people have no use for what either proposes.

I have seen much in the newspapers as to what is the issue of this campaign. Some say it is one thing, some another; but whatever difference there may be about details, it can be safely said that the great controlling issue of this contest is Republicanism versus Democracy. The question is whether or not we can entrust to the Democratic Party the administration of our public affairs. In the nature of things a Party that has had such experiences as have befallen it and a Party that is so destitute of foundation principles and serious purpose as it has shown itself to be is not a fit agency to take charge of the great problems with which we are dealing. The Vice-President told you about the Panama Canal,—a great, majestic business enterprise, a world work. We want the ablest men this country can produce in charge of it. Does anybody imagine we would better its prospects by taking its management out of the hands of

Theodore Roosevelt and William H. Taft, and putting it in the hands of the Democratic Party?

The same is true as to the Philippines. Our Democratic friends have no heart in that work. Their record with respect to the Philippines is one of condemnation for everything we have done there. If they were to get into power they would have to reverse our policy if they carried out the declarations they have been making, and that the American people would not submit to; for, no matter what sentimentalists say, the plain fact is that we are in the Philippines and there to stay, and no Party will get into power or continue in power that proposes to haul down the American flag. (Applause.)

As Senator Fairbanks told you, we have got the tariff question. We have got a deficit. He says the people are talking about revising the tariff, and he says the Republican Party will revise the tariff on protection lines whenever the best interests of the country require it. And that is true. But, my fellow-citizens, it is a different thing to provide for a deficit from what it is to provide for a surplus revenue. If we had a surplus of 24 millions we could revise the tariff and lop off that amount; but having a deficit to make up we have got so to revise the tariff, if we undertake to raise the deficit in that way, as to increase importations. I suppose by reducing the tariff sufficiently we could increase importations of wool from Argentina, of wheat from Canada, and of rye, oats, barley, corn and potatoes—of the farm products of other countries of the world. But do the farmers of Logan County want the tariff so reduced? I don't understand that they do. When a proposition comes up, as one did a year or two ago, to ratify a reciprocity treaty with Argentina, according to the provisions of which the tariff duty on wool was to be reduced, I was flooded with protests from the wool-growers of Ohio, and some of them came from this County. If I had agreed to anything like that

our old friend William Lawrence would have turned over in his grave. And yet that is what our Democratic friends would do, for a Democrat has no idea of revising the tariff, except on free trade or purely tariff for revenue lines. We have several times tried the Democratic policy in this regard, and every time the experience has demonstrated that it was folly and we have brought upon us hard times, which we have escaped from as we did in 1896 when we put William McKinley and a protective tariff again in power. The subject is one that Democracy cannot deal with satisfactorily because of their fundamental views.

It is the same with this proposed railroad legislation. That is a great question. We have 212,000 miles of railroads in this country. Sixteen billions of money have been invested in the railroads. The securities they have issued are in the hands of all classes of our citizens, from one end of the land to the other. It is thought necessary, and I have no doubt it is necessary, to enact some legislation that will further regulate and restrict our railroads in the operations they are carrying on, for there are abuses of many kinds. The Republican Party has taken that question up; it is alive to the character of it; we have been investigating it; we intend to legislate about it, and we intend to do the right thing at the right time. If you put the Democratic Party in power you can depend upon it it will do the wrong thing at the right time, or rather at all times.

In other words, my fellow-citizens, the issue this year is not about George B. Cox or any other person; it is not about any of these things we hear so much about; but it is, aside from State affairs and those national questions about which the parties have made declarations, the Republican Party against the Democratic Party. That covers all. The question for you to determine is which Party is the better entitled to be in control of this Government. Determine that not by present professions, but by the records the par-

ties have made, not in the past. I would not do our Democratic friends the injury of asking anybody to go back very far in their record. That would be too disagreeable. But determine it by the record they are making today. Where have they stood during the last eight years since William McKinley came into power. These have been eventful years. We have changed the map of the world. We have entered since then upon the construction of this canal. We have acquired Hawaii; we have acquired the Philippines; we have acquired Porto Rico. We have undertaken great problems. Which Party do you think is the more likely to solve these problems to your better satisfaction? I leave it with you to determine. If you think the Democrats could do that better than the Republicans could do it, then vote for Pattison, and let it go out to the United States, as Judge Parker says such a victory for the Democrats would be interpreted, as a declaration on the part of Ohio that you propose to turn away from the support of Roosevelt and Republicanism and support Democracy with nobody knows who for a leader. But if you do not feel that way about it, continue, as you have through all these years of the past, to stand by the Party that has never disappointed the American people; a Party that has a record of achievements the greatest and the grandest in human history; a Party that has contributed to the annals of America the greatest names that illumine the pages that have recorded those deeds. It is a great thing to belong to such a Party as this. We wish everybody could belong to it, and all can, for we keep the door open and let everybody in, but we are going to be careful in the future as we have in the past as to who shall control and govern and direct the affairs of this great Party. Now I must close. (Cries of "Go on.") I am going on—to the depot. I have just thirteen minutes in which to catch the train. It is not necessary for me to speak longer. I know it is not necessary, because of the enthusiasm, the in-



terest, the attention that I see here on every hand to what is transpiring in this Court House yard today. You have had many great meetings here in the past; you have many great memories by which to be encouraged to do your duty, but, my fellow-citizens, in Ohio this year let me specially exhort you to speak at the ballot box for a triumphant victory for Herrick and Republicanism that will proclaim throughout the nation that Ohio is true and loyal in her support of President Roosevelt and the American policies he has been advocating. (Long applause.)





ADDRESS  
OF  
HON. J. B. FORAKER  
ON THE  
LIFE, CHARACTER AND PUBLIC SERVICES  
OF  
SALMON P. CHASE,  
Late Chief Justice of the United States,  
DELIVERED BEFORE THE  
CIRCUIT COURT OF THE UNITED STATES  
AT SPRINGFIELD, ILLINOIS,  
OCTOBER 7, 1905.

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May it Please the Court:

The career of Chief Justice Chase was too eventful and too intimately connected with the great duties of a great period in our country's history to be justly portrayed in a brief address such as is called for on an occasion of this character.

Mere glimpses are all that can be taken of even the most important features of his life, while many minor events must be entirely ignored, which, under other circumstances, might be dwelt upon with both interest and propriety.

Fortunately in that respect, what we are most concerned about here to-day is not his childhood, or his private life, domestic or professional, but his public life, and particularly that part of it which led up to and included the Chief Justiceship.

He came of good stock, and had the good fortune to be born poor, and to be blessed with a powerful physique, an attractive personality, a dignified presence, a strong intellectual endowment, and such a predisposition to seriousness as to make frivolities of all kinds impossible.

He was also fortunate in being identified with both New England and the West, for thus he acquired the culture and refinement of the one section, and the vigorous and independent thought and progressive activity of the other.

He spent several years of his boyhood in the family of his uncle, Bishop Chase, of the Protestant Episcopal Church, who was stationed during this period at Worthington and Cincinnati, Ohio. After this he became a student at Dartmouth College, where he was graduated in the classical course with that mental power of analysis and logical thought and expression which nothing can develop quite so well as a thorough study of the Latin and Greek languages.

He next spent three years in Washington, during which period he read law under William Wirt, then Attorney General of the United States.

The relation of student and preceptor seems, however, to have been little more than nominal, since it was related by Mr. Chase that Mr. Wirt never asked him but one question about his studies. He also states that when he came to be examined for admission to the bar he found himself so illy prepared that he passed with difficulty, and chiefly, as he always thought, because he informed Mr. Justice Cranch, who admitted him, that he intended to locate in the West.

During his stay in Washington he had many advantages that compensated in some degree for this lack of preparation for the practice of his profession.



He was on terms of social intimacy with Mr. Wirt's family, whose position was such that he was not only brought in contact with all the prominent men then in control of public affairs, but also with all the great questions with which they were at the time concerned.

Being of a studious and serious turn of mind, with such experiences, and amid such surroundings, he naturally drifted into the study of the political problems of the day, so that when in 1830, at the age of 22 years, he opened a law office in Cincinnati, he was already almost as much occupied with affairs of State as about legal principles.

He chose Cincinnati for his future home because at that time it was the largest and most flourishing city of the West, and on that account gave the most promise of opportunity to a young lawyer ambitious to achieve success and distinction.

He did not foresee that the slavery question was soon to become acute, and that he was to entertain views and take a position with respect to that institution of such ultra character that a less hospitable community for him could scarcely have been found in any Northern State than that border city, situated on the line that divided the free from the slave States, was to become.

If he had foreseen all this it probably would not have changed his course, for he was so constituted by nature that he might have felt that duty required him to station himself at that outpost as a sort of advance guard of the anti-slavery movement.

For several years he labored industriously to gain a foothold in his profession without making any more than ordinary progress.

His biographers record that during this period he had time for social functions, magazine articles, some newspaper work, and, most important of all, for a revision

and editing of the statutes of Ohio which he published with a very able introduction in the nature of an historical sketch of the State and its developments. Still, however, he forged ahead, not rapidly, nor brilliantly, but surely, constantly and substantially.

His clients gradually increased in numbers and the work they brought him improved in quality until he had a very fair business, almost altogether of a commercial character, but his practice was still modest, involving neither large amounts nor complicated questions, and his position at the bar, although respectable, was yet comparatively humble and uninfluential, when, suddenly, unexpectedly and unintentionally, he was drawn into the controversy about Slavery and was started on a public career in the course of which he quickly became a political leader and achieved much fame as a lawyer.

### ANTI-SLAVERY LEADER.

The mobbing in 1836 of the Philanthropist, an Anti-Slavery Newspaper, published in Cincinnati by James G. Birney, aroused him, as it did thousands of others, to the intolerance of the slave spirit and the necessity of resisting its encroachments by protecting Free Speech and a Free Press if the rights of the white man, as well as the rights of the free colored man, were to be preserved. He at once took a pronounced stand as an anti-slavery man although he was always careful, then, and afterwards, until the Civil War, to declare and explain that he was not an abolitionist, and that he had no desire to change the Constitution or interfere with slavery in any way in the States where it was already established.

Although most of the time "out of line" he claimed to be a Whig until 1841, but professed to believe in the States Rights, Strict Construction doctrine of the Jeffer-

son School of Democracy, and thus reconciled his attitude with respect to slavery in the States and his opposition to its extension beyond the States by the contention that the States in their sovereign capacity had a right to authorize and protect the institution, although a great evil, if they saw fit to do so; and that the States had this power because it belonged to sovereignty and had not been delegated by the Constitution to the Federal Government; and that because such power was not delegated to the General Government, it had no power to authorize, protect, or even continue the institution in any district, territory or jurisdiction over which it directly governed.

Both his politics and his law were severely criticised for they made it impossible for him to fully satisfy any party or faction of that time.

He did not go far enough for the Abolitionists, and went too far for both the Whigs and Democrats. One repudiated him because he was pro-slavery as to slavery in the States, and the other because he not only opposed the extension of slavery into the Territories but advocated its abolition in the District of Columbia, for which he is credited with drafting one of the earliest petitions presented to Congress. It naturally followed that he soon had trouble to know to what political party he belonged; a trouble that continued to plague him all his life and apparently led him to try in turn to belong to all of them, but without finding satisfaction in any, not excepting those practically of his own creation.

Thus we find him calling himself a Henry Clay National Republican in 1832, a Harrison Whig in 1836, an out and out Whig in 1840, a Liberty man in 1844, a Free Soiler in 1848, a Democrat in 1851, so enrolling himself in the Senate, a Liberty man again in 1852, a Republican in 1856, and afterward until it was foreseen that he had

no chance against Grant to be nominated by the Republican Party for the Presidency in 1868, then suddenly becoming a Democrat again, seeking the nomination by that party, and in that connection claiming that aside from slavery questions, so far as basic principles were concerned, he had been a Democrat all his life.

On top of all this we find him writing to a friend shortly prior to the meeting of the Liberal Convention that nominated Horace Greeley at Cincinnati in 1872, that if it should be thought that his nomination would promote the interests of the country he would not refuse the use of his name, thus showing a willingness to charge parties once more on the condition expressed.

It is probably safe to say that he had membership in more political parties, with less enjoyment in any of them and with less mutual obligation arising therefrom than any other public man America has produced.

At any rate it was with this kind of zig-zag party affiliations he laid the foundations and built on them the claims on which he was elected to the Senate in January, 1849, by a fusion of the Democrats, Anti-Slavery Democrats, Democratic Free Soilers and Independent Free Soilers, and felt that he had a right to complain, as he did, because the Whigs, Anti-Slavery Whigs, and Free Soil Whigs would not also vote for him. In making that complaint, he ignored the fact that it was charged and believed by the Whigs that his election was brought about by a bargain, which, among other things, provided that two contesting Democrats, enough to give that party a majority, were to be admitted to seats in the House. There was undoubtedly a clear understanding arrived at but like some other men, of more modern times, such deals appear not to have been offensive to him, when made in his own behalf, since thereby the praiseworthy result was reached of securing his services



to the public. They were bad and to be execrated only when made by others, and in the interests of somebody else, whose services were not, in his opinion, so important.

His complaint was not, however, without plausibility, for he at least had equal claims on all the parties and factions named, except the two Independent Free Soilers, to whom he really owed his election, since he had belonged to all, had repudiated all, and had been repudiated by all.

And yet, most of these party changes, perhaps all except that of 1868, came about naturally, and, from his standpoint, strange as it may appear, consistently also. His opposition to slavery being paramount, and the Whig Party failing and refusing to become an anti-slavery party, he was lukewarm and irregular in its support until the death of Harrison and the accession of Tyler, when he lost all hope of it ever meeting his views. He then openly deserted it and joined the Liberty party and at once devoted himself to its reorganization and upbuilding, which party, however, he in turn, abandoned, and helped to disorganize to make way for the Free Soil Party of 1848, which he actively helped to form by bringing about a fusion of Liberal Party men, Barnburners, Anti-Slavery Whigs, Anti-Slavery Democrats, and all other dissatisfied classes who could be gathered into the fold; a combination of elements incongruous as to all questions except that of hostility to slavery, about which they had the most fiery zeal. This party, so constituted, nominated Martin Van Buren as their candidate for the Presidency, in a Convention over which Mr. Chase presided, and of which he was the dominating spirit, but they largely strengthened themselves and their cause by the ringing declarations of their platform, of which he was the chief author, for "Free Soil, Free Speech, Free Labor and Free Men."



What Chase evidently most wanted in connection with that Convention was the substance and not the shadow—the platform in preference to the candidate, for it was well known that the candidate had no chance of an election, and would therefore pass away with the campaign, while the principles enunciated would be educational, and would live to do service in the future.

Thus it was that while manifesting instability, if not contempt, as to party ties and associations, by flitting out and in from one party to another, he was yet steadfastly, zealously and efficiently making continuous war on slavery, and all the while coming into ever closer affiliation and co-operation with the out-and-out Abolitionists; for while nominally working only as an anti-slavery man, he was largely aiding in the development of a radical Abolition sentiment. His progress in this respect was inevitable, for as the discussion proceeded he was necessarily more and more drawn into it—explaining, defending and advocating his views.

All the while his horizon was widening, and he was becoming acquainted by correspondence and otherwise, with the leading anti-slavery men of all the other States, both East and West. This multiplied the demands upon him for an expression of his sentiments, and so during this period he wrote many articles for the newspapers and magazines, attended political conventions, wrote platforms, and addresses to the public, and made numerous speeches on all kinds of public occasions. Being a forcible and ready writer, and a logical and convincing speaker, although too deliberate to be magnetic, he was constantly in demand, and as constantly making valuable contributions to the general literature that was used against slavery by its enemies of all shades and degrees.

Along with this growth of political prominence and

influence before the public, there came to him, as a lawyer, a series of cases, all arising, in one form and another, under the Fugitive Slave Law, by which he was given repeated opportunities, which he well improved, of developing and presenting to the country the legal aspects of the controversy in a way that attracted universal attention to his cause and to himself as one of its ablest and most powerful exponents.

He was not successful except on some technical points in any of these cases, and probably did not expect to be; and in most if not all of them, he was paid inadequate fees, if any at all; but he labored and strove in them with all the energy that confidence of success and the most ample compensation could inspire. He thoroughly and exhaustively briefed them, and raised and insisted upon every point that could be made, both technical and substantial. In one of these cases that went to the Supreme Court of the United States, he artfully placed before the whole country, as well as the Court, all his constitutional and other arguments not only against Slavery but also against a Fugitive Slave Law, and particularly against its application to any but the original thirteen States, and therefore against its application to Ohio.

He was overruled, as he must have expected he would be, but he was purposely addressing himself to the country as well as the Court, and had a confidence, that subsequent events vindicated, that he would eventually secure a verdict at the hands of his fellowmen that would right the whole system of wrong that he was combating.

## IN THE SENATE.

In the Senate he was out of harmony from first to last with both the Democrats and the Whigs. He at first in-

sisted upon calling himself a Democrat, although the Democrats who were in the majority practically disowned him, and in the Committee assignments refused him any substantial recognition. This did not seem to either embarrass or handicap him. He had, in consequence of being practically relieved from Committee work, all the more time for the consideration of the slavery question, which was then rapidly becoming more and more the all absorbing question of the hour.

He had not been long in his seat until he found opportunity to speak on that subject. From that time until the end of his term he was the real leader of the anti-slavery forces of both the Senate and the House. They were few in number, but they were able and forceful men, who stood up manfully and inspiringly for a sentiment which was then unpopular but which was soon to control the nation.

His most notable efforts were made in opposition to the Kansas-Nebraska Bill. He was overwhelmingly beaten when the vote was taken, but he had so crippled and weakened the measure in the popular mind, that Douglass soon realized that while he had won the day in Congress, he had lost it before the people, who had become so aroused that he quickly saw that the long predicted dissolution of the Whig Party and the revolt of the Free Democrats were at hand, and that a new party was forming that was destined to change the entire complexion of the political situation and bring to naught all he had gained.

The debate was one of the most acrimonious and, measured by its far-reaching consequences, one of the most important that ever occurred in the American Congress.

Chase was the target for all the shafts of malice and ridicule, but through it all he bore himself with dignity

and serenity, and showed such sincerity, zeal and ability, that, notwithstanding his obnoxious views, he gained the friendship of most of his colleagues and the respect of the whole country. His personal character was always upright, and now as he came to the end of a turbulent term in the Senate, where he had been disowned and in many ways slighted and mistreated by both parties, he saw, what he had probably long foreseen, a new party forming, of giant strength and high purpose, which he had done as much as any other man, if not more, to create, and of which he was an acknowledged leader.

The Democrats being in control of the Ohio Legislature, took his place in the Senate away from him, and gave it to George E. Fugh. But instead of punishing and retiring him, as they designed, they only made the way open and easy for him to become, after a most spirited campaign that attracted the attention of the whole country, the first Republican Governor of Ohio, and as such a prominent candidate for the Presidency.

## THE PRESIDENCY IN 1856.

He was conscious of the work he had done in organizing the new party, and realized that he had greatly strengthened it by leading it to its first great victory in the third State of the Union, as Ohio then was, while in New York and Pennsylvania his party associates had failed. With his strong mental powers, long experience in public life, and familiarity with all the public affairs and questions to be dealt with, it was but natural that under the circumstances, he should expect the honor of leading his party, as its candidate for the Presidency, in its first great national contest, and that he should experience keen disappointment when he saw his claims rejected, and the honor conferred on a younger man, who

had no special claims, except the popularity of an idol of the hour, who had won his prominence and the public favor not by participation in the fierce struggles and educational experiences through which the country had been passing, but by the success of a number of daring and spectacular explorations. He was solaced, however, by the thought that he was yet a young man, who could wait and grow with his party, and become its candidate later when the chances of success were more certain. He was in a good position for such a program.

### GOVERNOR OF OHIO.

But aside from all such considerations he was naturally ambitious to make a good Governor, and such he was. His administration was conducted on a high plane, and in all respects he showed himself a capable and efficient Executive. Throughout his two terms the slavery question, through repeated Fugitive Slave Law cases, was almost constantly occupying public attention. As Chief Executive of the State he now had an official responsibility for the due execution of the laws and the process of the Courts, and had great difficulty to meet the requirements of public sentiment and avoid a conflict with national authority. While in some instances severely criticised he appears with respect to all these delicate and troublesome controversies to have fairly and faithfully performed his duty. At any rate when he retired from his office in January 1860, his party was greatly strengthened, and he had gained in general estimation as a man of pronounced convictions, honorable purposes and high qualifications for the public service. This was emphasized by a re-election to the Senate for the term commencing March 4th, 1861.



Thus it came to pass that in 1860 he ranked officially and personally, and deservedly so, with the foremost men of the nation. He seemed to have just and superior claims upon his party for its highest honor, and with a frankness amounting almost to immodesty—he set about securing it.

### PRESIDENTIAL CANDIDATE 1860.

He had friends in all sections of the country, and he called upon them to advocate and advance his cause. He appeared to think only Seward and Bates formidable rivals, and easily satisfied himself that his claims were superior to theirs, but his friends in different parts of the country, especially in his own State, which seems to have had factional divisions and differences then as well as in later years, soon found that while all acknowledged his abilities, general qualifications and high personal character, yet there was a strong feeling in many quarters of distrust as to his views on the tariff and other questions that Republicans deemed of vital importance. This was due not so much to any statements he had made on these subjects, for he had never talked or written very much except about slavery, as to his oft repeated insistence and reiterated declarations from time to time preceding the organization of the Republican party, that he was a Democrat, and that he adhered to all the principles of that party, except those with respect to slavery.

In Ohio there was added a lingering resentment among many of the old Whig leaders for his apparently vacillating course as a party man, and especially for his combination with the Democrats to secure his election to the Senate in 1849.

Some of his friends were frank enough to tell him that his chances were not promising, but he listened more to those who told him what he wanted to hear, and, notwithstanding a divided delegation from his own State, and but few delegates from other States who favored him as their first choice, he industriously and optimistically continued his canvass until the Convention met, and, giving him only forty-nine votes, dashed his hopes to the ground by the nomination of Abraham Lincoln.

Much fault has been found with him for the manner in which he personally conducted his campaign for this nomination: He seems to have proceeded on the theory that "If he wanted the office he should ask for it," and to have not only asked but also in many instances to have insisted upon his right to support.

His correspondence teems with an array of his claims, and with arguments in support of them, and with advantageous comparisons of them with the claims of others, and with directions and suggestions to his friends how to advance his interests.

It is to be regretted that a man of such lofty character, such high ability, and such long experience with men and public affairs, could have shown so little regard for propriety with respect to such a matter.

The small vote he received in the Convention was probably due in some degree at least to the offense he gave in this way, for the sturdy, hard-headed men of that heroic time naturally disliked such self-seeking with respect to an office the duties and responsibilities of which were so grave that any man might well hesitate to assume them even when invited to do so.

In all other respects his canvass was free from criticism. It was honest; there was no trickery attempted in connection with it—no promises were given, no bargains were made, no money was used. When it was

over he had nothing to regret except defeat, and he took that gracefully. He gave Mr. Lincoln hearty support, and was undoubtedly truly rejoiced by his election, for he saw in it the triumph of the principles for which he had been all his life contending, and the beginning of the end of slavery in the States as well as elsewhere.

## IN THE CABINET.

Mr. Lincoln at the time of his election was underestimated by almost everybody, except those whom he was wont to call the plain, common people. They seemed to know him and his greatness by intuition, as it were. They had confidence in his sound common sense, and loved him for his homely manners, and simple straightforward methods. They felt from the day of his nomination that he would be elected; and when he was elected, and the clouds began to gather, and one State after another seceded, there never came an hour when they did not implicitly rely on him to safely pilot them through whatever storms might come. He had their confidence from the first and he held it to the last. They never wavered either in their devotion to his leadership, or in their faith that he would eventually save the Union.

From the very beginning they gave him also his rightful place as the real leader, who outranked all his associates in public life, not only because he was President, but also, and more particularly, because of his natural endowments and qualities of mind and heart.

But it was different with some of the leaders. Many of them were slow to acquire a just conception of his character and abilities. They never thought of him seriously in connection with the Presidency until he was practically nominated, and they did not think of him then, except as a sort of accidental compromise, who was not

well qualified for the position. They regarded him as lacking not only the culture and refinement, but also the practical experience with public affairs that was essential to their successful administration.

He came to the front so suddenly and unexpectedly that he had gone ahead of them and had been named by his party for its leader before they realized that they were being supplanted. His administration was organized and fairly under way before they began to recognize their true relation to him.

This was particularly true of Seward and Chase, who had been the chief, and as they long thought, almost the exclusive rivals, for the honors of party leadership.

Both were invited to take seats in the Cabinet, and each accepted with the idea that, in addition to his own Department, he would be expected to bear, in large degree, the burdens of all the other Departments. Each seemed to think the country would look to him rather than to Mr. Lincoln for the shaping of the policies to be pursued. There was some excuse for this in the fact that each had his ardent friends and admirers who encouraged the idea, and because some of the leading newspapers seemed to think that Lincoln had called them into his counsels from consciousness of his deficiencies, and in recognition of their superior fitness for the work he had been called to perform.

This thought—of the broader and more important duty of supervising the whole administration, seems for a time to have so occupied Chase's mind, that he did not at first realize, and perhaps never, fully, that his legitimate field at the head of the Treasury Department was full of duties of the highest importance and the amplest opportunities for conspicuous service.

During all the time he was a member of the Cabinet, but particularly during the first months, he gave much

volunteer attention to duties outside his Department, particularly to those relating to the War Department; the organization of the army and the planning and conducting of campaigns; he was an inveterate letter writer, and was constantly giving advice and making suggestions to apparently every one who would listen, including commanding officers in the field.

Gradually, however, he came to more clearly understand that his own duties were enough, if properly looked after, to tax him to the utmost, and in time he came also to realize that Mr. Lincoln was the head of his own Administration, and the final arbiter of all controverted questions.

By reason of this disposition and habit his work in the Cabinet was not so good as it might have been if he had concentrated his efforts in his own Department and had been properly alive from the outset to the seriousness of the situation he was called upon to meet. His fault in this latter respect was, however, common to all, for the war in its magnitude and duration exceeded all expectations, and its demands multiplied with such frightful rapidity as to upset all calculations, thus making it well nigh impossible for him to keep pace with its growing requirements, and secure from Congress the authority and help necessary to enable him to carry out such plans as he formulated; and yet, notwithstanding all this, it would be difficult to exaggerate what he accomplished.

He found his Department disorganized, but in the midst of the excitements of the hour and the exacting duties of a more important nature that fell upon him, he thoroughly re-organized it, introducing many reforms that greatly increased its efficiency. He found the Government without funds or credit, and without adequate revenues to meet ordinary expenditures in time of peace,



but he surmounted all such obstacles and made it successfully respond to the exigencies of war.

With the necessity suddenly precipitated of providing for great armies and navies, and equipping and maintaining them, he would have had a hard task under the most favorable circumstances, but it was increased almost beyond the power of description by an empty Treasury, a startling deficit, an impaired credit, an inadequate revenue, and eleven States in rebellion, with tens of thousands of copperhead sympathizers in every loyal State criticising and actively opposing in every way, short of overt acts of treason, every step he took or tried to take.

He had all the help that able men in Congress and outside could give him by advice, and the suggestion of plans and methods, and ways and means, but after all he was the responsible official, whose duty it was to hear all, weigh all, and decide which plan of all the many suggested should be adopted, and then take upon himself the responsibility of recommending it and advocating it before the country and before the Congress, and if the necessary authority could be secured, executing it.

His difficulties were further increased by the fact that the Republican Party was then new to power, and its members in public life had not yet learned to work in harmony. Many of them were strong and aggressive men who were slow to adopt the views of others with which they did not fully coincide.

In consequence his recommendations were subjected to the keenest scrutiny and criticism from party associates, as well as opponents, and not infrequently they were materially modified or changed before they received statutory sanction, and in some instances entirely rejected.

In all these experiences his high personal character and well recognized ability were of incalculable value

to him and his country. Whatever else might be said, nobody ever questioned the integrity of his purpose, the probity of his action, or the sincerity of his arguments.

While in the light of subsequent events it is seen that much that he did might have been done better, yet when the circumstances and the lack of light and precedent under which he acted are fairly measured it is almost incredible that he did so well.

When we recall that great conflict we are apt to think only of its "pomp and circumstance"—of the deeds of heroism and daring—of the army and the navy—of the flying flags and the marching columns—of the services and sacrifices of those who fought and died—forgetting that less fascinating but indispensable service, and the noble men who rendered it, of supplying "the sinews of war." without which all else would have been in vain

His labors in this behalf were incessant and herculean. On this occasion details are impossible. Suffice it to say that by every kind of taxation that could be lawfully devised he swelled the revenues to the full limit at which it was thought such burdens could be borne, and by every kind of security, certificates, notes and obligations that he could issue and sell or in any way use, he drew advance drafts upon the Nation's resources.

He met with many disappointments and discouragements, but he unflinchingly persevered, and finally succeeded, approximately, to the full measure that success was possible.

There were numerous transactions that might well be mentioned, because of the illustration they afford of the services he rendered, the difficulties he encountered, and of the kind of labor and effort he was constantly putting forth with members of Congress, bankers, editors and others to advance and uphold his views, develop and educate public sentiment, and secure needed legislation and

support; but all are necessarily passed over, that some mention may be made of two subjects, with which he was so identified that even the briefest sketch of his public services should include some special reference to them.

They were the issue of legal tender notes, hereinafter discussed in connection with the legal tender cases, and the establishment of the National Banking System, involving, as it did, the extinction of State Banks of issue.

## THE NATIONAL BANKING SYSTEM.

The establishment of a uniform National Banking System was, like most great measures, of gradual development.

It was much discussed and many minds contributed to the working out of the details, but Chase seems to have a pretty clear claim to its general authorship.

Upon him more directly than anybody else was impressed the necessity for some kind of reform in that respect, for while each citizen was experiencing difficulty in his dealings with individual banks he was compelled to deal with practically all of them, and, therefore, felt, in a consolidated form, the combined disadvantages that others suffered in detail.

In view of what we now enjoy, and the ease with which, looking backward, it appears that it should have been brought about it seems incredible that an intelligent people should have so long suffered the inconveniences of the old System.

It can be accounted for only from the fact that for the Government in a general way, and for the people in a commercial and general business sense, that was the day of small things, and it was tolerated because they were accustomed to it, and because there was a natural aver-

sion, especially on the part of the banks, to making radical changes that were necessarily in some degree of an experimental character.

But finally there came a precipitating cause, and the contest was inaugurated to substitute something better. The case was a plain one but the resistance was stubborn.

Aside from the universal and almost unbearable inconveniences of doing business with a currency that had no uniformity of issue, appearance, or value; and which had no proper safeguards against counterfeits and forgeries, was the fact that it was not possible for such a discredited and unsatisfactory System to render the Government much substantial help in placing its loans or in conducting any of its important fiscal transactions.

Chase saw clearly, and from the first, that such a System could not co-exist with a uniform national system such as he contemplated, and that the existing State Institutions would not surrender their charters, and take new ones under an Act of Congress, unless they were offered more substantial advantages than the Government should be required to give, or instead were deprived of the privilege of issuing their own notes, and that the best way to solve the problem was to tax their issues out of existence.

It was a hard matter to bring others to agree with him. The opposing banks commanded in the aggregate a tremendous influence, and with the aid of doubting Congressmen and newspapers they long delayed, and finally so crippled the first Act that was passed, that it failed to provide an acceptable and successful plan largely because it left the State issues untouched.

It continued so until the law was so amended as to embrace practically all the recommendations Chase had made and insisted upon, including a tax of ten per cent.

on the issues of State Banks. This did not happen until he had quit the Treasury Department, but it was his plan and his work, consummated, that gave us freedom from the worst banking system that could be well imagined, and substituted therefor one of the best any country has ever enjoyed. It was a work of high character and of enduring benefit to the whole country. It was the crowning act of his administration of the Treasury Department, if not of his whole life, and, coupled with his other successes, entitles him to rank, after Hamilton, who has had no equal, with Gallatin and Sherman, and the other great Secretaries who have held that high office.

## RELATIONS TO MR. LINCOLN.

It was unfortunate for his influence then and his reputation now that at times he showed less satisfaction with his position and exhibited less cordial good-will in his relations to Mr. Lincoln than he should. Personal disappointment was probably the chief cause. From his first appearance in public life he was talked about for the Presidency, and almost from the beginning he talked about and for himself in that connection. Barring the indelicacy manifested, there was no impropriety in such talk until after he accepted a seat in the Cabinet. It was different after that, for while there was all the time more or less opposition cropping out to the renomination of Mr. Lincoln, yet there was never at any time enough to justify a member of his political household, who had been part of his administration and policies, in the encouragement of that opposition, particularly for his own benefit. That Chase was a passive candidate during all the time he was in the Cabinet and a good part of the time an active candidate, cannot be doubted. His many letters



and diary entries show this; not so much by his open advocacy of his claims as by criticisms of Mr. Lincoln and his manner of conducting the public business and the general encouragement he was giving and evidently intending to give to the opposition sentiment.

He may not have realized fully the character of record he was making in this respect, for he was no doubt somewhat blinded by the fact that he never could quite outgrow the idea that Lincoln did not deserve to be put ahead of him in 1860, and that the country would surely sometime learn its mistake and right the wrong. In addition he had a conceit that he was of greater importance than he was getting credit for at the hands of the President, and that when he and the President differed about anything in his department the President should yield, as he always did, except in a few instances when his sense of duty and responsibility prevented. At such times he was especially liable to say and do peevish and annoying things. On a number of such occasions he went so far as to tender his resignation, accompanied each time with a letter expressing a deep sense of humility but with an air of injured innocence that he no doubt keenly felt. Notwithstanding the trial it must have been for Mr. Lincoln to do so, he, each time, with singular patience, that only the good of his country could have prompted, not only refused acceptance, but apparently placed himself under renewed obligations by insisting that he should remain at his post.

Naturally this was calculated to cause Chase to more and more regard himself as indispensable, until finally, June 30th, 1864, on account of new differences connected with the appointment of an Assistant United States Treasurer at New York, he made the mistake of tendering his resignation once too often. This time Mr. Lincoln promptly, and to Mr. Chase's great surprise and

chagrin, accepted it and clinched the matter by immediately appointing his successor.

He was thus suddenly left in a pitiable plight so far as his personal political fortunes were concerned, and but for the uncommon generosity of Mr. Lincoln, he would have so remained.

Mr. Lincoln had been renominated and the victories of Grant and Sherman were every day strengthening his Party and his chances of election.

All thoughtful men could see that the end of the war could not be much longer deferred and that, with victory assured and Mr. Lincoln re-elected, there was renewed strength with continuance in power ahead for the Republican party. It was a bad time for a man who had sustained the relations he had to the Party, and the war, and the administration, to drop out of the ranks and get out of touch with events; but there he was, "outside the breastworks," and nobody to blame but himself.

It was a hard fate that seemed to have befallen him; and such it would have been if almost anybody but Mr. Lincoln had been President, for most men would have left him helpless in his self-imposed humiliation. But Mr. Lincoln was a most remarkable man. He was enough like other men to enjoy, no doubt, the discomfiture Chase had brought on himself, but enough unlike other men to magnanimously overlook his weaknesses and offenses when public duty so required.

### APPOINTED CHIEF JUSTICE.

Accordingly, remembering only his long and faithful services and his high general and special qualifications for the place, he made him Chief Justice.

From the date of his resignation until December when he was appointed, were probably his bitterest days.

He had nothing to do and no prospect. He made an effort, or at least his friends did, to secure his nomination for Congress from his old Cincinnati District, but so signally failed as to give painful evidence that he was not only out of office and out of power, but also out of favor. He was almost out of hope also when Chief Justice Taney died. He was conscious that he had no claim on Mr. Lincoln for that or any other place, not alone because he had petulantly deserted him at a critical moment, but also and more particularly because in his vexation of spirit he had said some very unkind things of him, but he did not hesitate to allow his friends to urge him for that high honor, and, notwithstanding many protests, Mr. Lincoln gave it to him.

It would be hard to recall an instance of greater magnanimity than was thus shown by Mr. Lincoln. It was magnanimous because, while in most respects Mr. Chase's qualifications for the position were high, they were not of such exceptional character as to single him out above all other men for the place; certainly not if we consider only his experience at the bar, for while the first six years of his life in Cincinnati were devoted to the practice of his profession, yet, like the same period with other beginners, they were not very busy years. He had no exceptional successes. His progress was satisfactory and probably all that should have been expected, but there was nothing extraordinary to forecast for him the great honor of the Chief Justiceship.

During the following thirteen years, until he was elected to the Senate, his time was so occupied with political demands that he did not have much opportunity for professional work, and what time he did devote to his law practice was taken up very largely with Fugitive Slave Law cases, aside from which there is no record of any case or employment that he had during all those

nineteen years, from 1830, when he located in Cincinnati, until 1849, when he was elected to the Senate, that was of anything more than passing importance. During all that time, he probably never had any single employment of sufficient importance to bring him a fee of so much as \$1,000.

It is probable that in all that time he never had a patent case, or an admiralty case, or any occasion to make any study whatever of international law, and yet at that point virtually ended not only his career as a practicing lawyer, but also his study of the science of the law except as an incident of his public services.

During the next six years—until 1855—he was a member of the Senate, and devoted all his time to his public duties and to public questions and affairs. He was next, for four years, Governor of Ohio, and then came the national campaign of 1860, the election of Mr. Lincoln and the Secretaryship in his Cabinet, which continued until his resignation shortly before he was appointed Chief Justice.

And yet he was, all things considered, probably the best qualified of all who were mentioned for the place. His limited experience at the bar was not without precedents. Neither Jay nor Marshall had any very considerable experience of that character.

Both of them, like Chase, were prepared for their great work more by their public services and studies as statesmen, than by the general study of the law and the trial of cases in the courts. It was much the same with Taney. He had a larger experience as a practitioner, and was Attorney-General, but his appointment was due more to his general public services than his professional achievements, although they were highly creditable and his standing as a lawyer was good.

Jay was intimately identified with the formative stages of our Governmental institutions, and in that way was familiar from their very origin with the public questions it was thought might arise for decision; and Marshall, a soldier of the Revolution and a careful student of the great purposes and results of that struggle was thereby equipped for not only his distinguished political career, but also for the great work for which the American people owe him a debt of everlasting gratitude, of so interpreting the Constitution as to breathe into it, with the doctrine of implied powers, that life, flexibility and adaptability to all our exigencies and requirements, that have made it, not only a veritable sheet anchor of safety for us, but also the marvel of the statesmen of the world.

With Chase, as with his illustrious predecessors, it was his long, varied and important public services rather than his professional labors that prepared him for the Chief Justiceship and secured him the appointment. They were of a character that broadened his views by compelling a study of the Constitution and the foundation principles of our Government in connection with their practical application.

Mr. Lincoln not only understood and appreciated this, but he foresaw, and no doubt had much anxious concern on that account, that, after the restoration of peace, all the great transactions and achievements of his Administration would have to run the gauntlet of the Courts. The abolition of slavery, the status of the freedmen, the status of the seceding States, the status of their inhabitants—the leaders who had brought about the war, and the masses of the people who had simply followed them, the confiscation of property, all the great war measures that Congress had enacted, including the legal tender acts, he knew must in the order of events sooner or later come before the Supreme Court for final adjudication.



It was natural to conclude that no man was so well qualified to deal intelligently and satisfactorily with these questions as he who, in addition to having good general qualifications, had been a capable and responsible participator in all that gave rise to those questions.

There were many other great lawyers, but there was no other lawyer of equal ability who had sustained such a relation to these subjects.

Mr. Lincoln had a right to expect that with Chase Chief Justice the fruits of the war, in so far as he might have occasion to deal with them, would be secure, and this doubtless turned the scales in his favor.

In large measure he met every just and reasonable expectation. In so far as he failed to do so, it was generally charged, whether rightfully or not, to his ambition to be President, which he should have put away forever on his accession to the Bench, but which he appears to have indulged until his very last days.

This is particularly true of his failure to bring Jefferson Davis to trial; and with respect to his rulings in the Impeachment of Andrew Johnson; and his opinions in the Legal Tender cases.

Most men are now agreed that he acted wisely as to Davis, and that he ruled honestly and in most cases correctly on the trial of Johnson.

## THE LEGAL TENDER CLAUSE.

As to the Legal Tender cases he was at the time and has been ever since much censured, aside from the merits of the controversy, on the ground that he tried to undo on the Bench what he did, or at least was largely responsible for as Secretary. No complete defense against this charge can be made, but the case against him is not so bad as generally represented, for, while

finally assenting to such legislation, and from time to time as occasion required availing himself of its provisions, he was at first opposed to the step on the ground of policy and from doubt as to the power, and at last reluctantly yielded his objections rather than his opinions, only when the necessities of the Government seemed to imperatively so demand, and when Congress had fully determined to resort to the measure anyhow.

For him to have longer opposed would have been futile to prevent it, and could not have had any other effect than to discredit the notes when issued, breed discord, and put him at cross purposes with men, as competent to judge as he, with whom it was his duty to co-operate in every way he could to accomplish the great purpose all alike had in view of preserving the Union.

The situation was so unlike anything with which we are to-day familiar, that it is not easy to recall it.

Instead of the annual revenues of the Government aggregating the abundant and almost incomprehensible sum of seven hundred millions of dollars, as they do to-day, they amounted then from all sources to less than fifty millions of dollars.

Instead of two per cent. bonds selling readily in wholesale quantities, as they do to-day at a premium, six per cent. bonds were sold only with difficulty, and in dribbling amounts at a ruinous discount.

In lieu of a national paper currency, good everywhere as the gold itself, we had only an inadequate supply of notes of uncertain and varying value, subject to no regulation or provision for their redemption in gold, except such as was imperfectly provided by the different States.

Few saw and appreciated until the second year of the war in what a gigantic struggle we were involved, and how stupendous must be the financial operations and provisions of the Government to meet its requirements.

For this reason no comprehensive or well considered plans were adopted at the start, as foresight of what was coming would have suggested, but on the contrary mere temporary expedients, such as the sale of bonds in comparatively small amounts, and to run for short periods, demand loans, interest and non-interest bearing Treasury certificates and notes, demand notes, and whatever form of obligation could be utilized for the time being were resorted to, and relied upon to tide over what it was hoped and believed would be, although a most severe, yet only a temporary emergency.

As the war progressed and we met with reverses in the field, that indicated it would be prolonged, specie payments were suspended, and the national credit became more and more strained and impaired.

In consequence it became practically impossible to longer raise by such methods the necessary funds with which to conduct the Government and prosecute the war, or even to transact satisfactorily the private business of the country.

The point was finally reached where the people must come to the financial help of the Treasury, or the Union must perish.

Chase saw as well as others that the law of the case was Necessity, but he did not yield without an effort to have attached as a condition, provision for a uniform National Banking System. The condition was not accepted, but was provided for later, and long before the legal tender cases arose.

Whatever else may be said about the legal tender clause, it is a fact of history that the effect for good on the Union cause was instantaneous and immeasurable. If it was a forced loan from the people, they gladly made it. If it was a hardship on anybody, it was not com-

plained of by any friend of the Union. It gave confidence and imparted courage, and from that moment success was assured, not only for the Union cause, but for everybody connected with it, and especially for Chase himself, for without it his administration of the Treasury Department would have been a dismal and mortifying failure.

Such a measure, arising from such a necessity, and accomplishing such results, was as sacred as the cause it subserved, and, aside from the wholesale disasters involved, it never should have been called in question by anybody, especially not by anyone who had the slightest responsibility for its enactment, and least of all by a personal or official beneficiary.

It is both impossible and unnecessary, if not inappropriate, to here discuss the legal propositions involved in the legal tender cases, but, on the other hand, it is both appropriate and essential to the completeness of these remarks to speak of Chief Justice Chase's attitude with respect to them.

No one can make a better defense for him than he made for himself.

In *Hepburn vs. Griswold*, anticipating the criticisms he knew must follow his decision that the legal tender clause was unconstitutional as to debts previously contracted, he said, manifestly by way of attempted personal justification :

"It is not surprising that amid the tumult of the late Civil War, and under the influence of apprehensions for the safety of the Republic almost universal, different views, never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive authority. If power was assumed from patriotic motives, the assumption found ready justifica-

tion in patriotic hearts. Many who doubted yielded their doubts; many who did not doubt were silent. Some who were strongly averse to making government notes a legal tender felt themselves constrained to acquiesce in the views of the advocates of the measure. Not a few who then insisted upon its necessity, or acquiesced in that view, have, since the return of peace, and under the influence of the calmer time, reconsidered their conclusions, and now concur in those which we have just announced. These conclusions seem to us to be fully sanctioned by the letter and spirit of the Constitution."

In the Legal Tender Cases he amplified this somewhat, but without adding to its strength.

His opinions in these cases were in dignified style and, from his point of view, very able; but there was then and still is, and perhaps always will be much difference of opinion as to their merit.

In all other respects his work as Chief Justice is now universally considered highly creditable—some of it particularly so—especially his opinion in *Texas vs. White*, which he regarded with great pride and satisfaction as a sort of culminating fruit of his life's labors. His opinions were usually brief and always clear and strong. They cover almost every phase of the litigation growing out of the Civil War and the reconstruction acts that followed, and all the decisions of the Court, while he presided, remain unquestioned, except, inferentially, the constitutionality of the income tax.

He died May 7, 1873, in the sixty-sixth year of his age, after only eight years of service on the Bench; but they were years of great anxiety to the American people, for, during all that time, the country's destiny was in a large measure in the hands of the Supreme Court. On its decisions depended the issues of the war—whether to be upheld and made secure or overthrown and brought



to naught. The Court was equal to all requirements and did its part so splendidly and brilliantly of the great work of regeneration and preservation that Chase and his associates deserve to stand—and do—in public esteem and gratitude next after Marshall and his associates. The one dealt with the construction of our government, the other with its reconstruction. The labors of both were vital.

If he had been content to devote himself to his judicial work exclusively, he would have been spared much that was disagreeable and his fame would have been brighter than it is.

All his life, until his last two years, he had robust health, unlimited energy, and an almost uncontrollable disposition to participate in the general conduct of public affairs.

In consequence, while Chief Justice he was, in what was regarded as a sort of intermeddling way, constantly giving attention to questions that belonged to Congress and other departments of government, and was from time to time freely offering advice and making suggestions as to legislative enactments and governmental policies; but, more unfortunately still, he was all the while listening to the suggestions of unwise friends and mere flatterers about the Presidency. Much work was done for him with his knowledge and approval to secure the Republican nomination in 1868, but early in that year, seeing there was an irresistible sentiment in favor of General Grant, he withdrew himself from the race. If he had remained out there would have been but little criticism, but he was scarcely out of the Republican race until he was entered for the Democratic. While the impeachment trial of President Johnson was yet in progress he signified a willingness to become the Democratic candidate and set forth in letters to his friends that inas-

much as the slavery questions had all been settled there was nothing in his political beliefs inconsistent with the principles of Democracy in which he had always been a believer. For a time there seemed strong probability that he would be the Democratic nominee. But it is familiar history that before his name could be presented the Convention was stampeded to Governor Seymour. Naturally there were charges that he was influenced, on account of his Presidential candidacy, by political considerations, and in this way he was shorn of much of the dignity, confidence and influence that rightfully belonged to him in his high office. He suffered in this way, not only as Chief Justice, but also as a man. This is especially true of his candidacy in 1868 for the nomination first by the one party and then by the other, for at that time there was such a radical difference between the parties, and so much bitterness of feeling, that it was incomprehensible to the average mind how any honorable man could so lightly, and with such apparent equal satisfaction to himself, belong to first the one and then the other, and with like zeal seek, or at least be willing to accept, the honors of both.

The explanation is in the fact that it was the weakness of a strong man. He was so conscious of his mental powers and of his qualifications by reason of his long public service, to make a capable and efficient Chief Magistrate, that it was easy for him to think his claims for such recognition better than those of others; especially others who had been differently trained, as Grant had been, and, therefore, to believe that his friends were right in their judgment that he was, for just reasons, the people's choice, and that it was his duty to his country, as well as to them, to become their candidate.

With all his faculty for measures he had but little for men. He was himself so simple-minded, truthful and

straight-forward in his dealings with others that he seemed incapable of understanding how untruthful and deceitful others were capable of being in their dealings with him, especially if their pretensions were in accord with his own views and desires.

As time passes these features of his career will fade out of sight and be forgotten. Already he has taken his proper place in history, and in the appreciation of the American people, as the great figure he really was—a strong, massive, patriotic, fearless and controlling character in the settlement of the mighty questions that shook to their foundations the institutions of our Government. He will be remembered also for the purity of his life, for his domestic virtues, for his deeply religious nature, ever depending on Divine help, and for that love and zeal for humanity that made him brave social ostracism and sacrifice, if necessary, all chance of personal political preferment that he might champion the cause of the slave and break the power that held him in fetters. In the light of true history the consistency of his conduct will not be determined by the record of his party affiliations, but by the constancy of his devotion to the cause that filled his heart and dominated all his political actions. Measured by that test, few men have run a straighter course or done more to merit a high place in the esteem of their countrymen.



RAILWAY  
RATE  
LEGISLATION.





# RAILWAY RATE LEGISLATION.

Extract from President Roosevelt's Message of  
December 6th, 1904.

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## REBATES.

Above all else, we must strive to keep the highways of commerce open to all on equal terms; and to do this it is necessary to put a complete stop to all rebates. Whether the shipper or the railroad is to blame makes no difference; the rebate must be stopped, the abuses of the private car and private terminal-track and side-track systems must be stopped, and the legislation of the Fifty-eighth Congress which declares it to be unlawful for any person or corporation to offer, grant, give, solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce whereby such property shall by any device whatever be transported at a less rate than that named in the tariffs published by the carrier must be enforced. For some time after the enactment of the Act to Regulate Commerce it remained a mooted question whether that act conferred upon the Interstate Commerce Commission the power, after it had found a challenged rate to be unreasonable, to declare what thereafter should, *prima facie*, be the reasonable maximum rate for the transportation in dispute. The Supreme Court finally resolved that question in the negative, so that as the law now stands the Commission simply possess the bare power to denounce a particular rate as unreasonable. While I am of the opinion that at present it would be undesirable, if it were not impracticable,

finally to clothe the Commission with general authority to fix railroad rates, I do believe that, as a fair security to shippers, the Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review. The Government must in increasing degree supervise and regulate the workings of the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to at once go into effect, and to stay in effect unless and until the court of review reverses it.

Steamship companies engaged in interstate commerce and protected in our coastwise trade should be held to a strict observance of the interstate commerce act.

Extract from Speech of Secretary Taft to Republican State  
Convention at Columbus, Ohio, May 24th, 1905.

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AMERICAN RAILWAYS TYPIFY GROWTH.

The American railroads ought to be, and are to-day, the pride of this country. They typify in the most satisfactory way the energy and growth of which this people is capable. With mileage greater than that of all of the rest of the world together, constructed almost wholly as a matter of private enterprise, they measure not only the individual energy of the business men of this country, but they mark, as one of its best indexes, the intelligence of the people between the parts of whose enormous expanse of territory there is such ease, rapidity and cheapness of communication. It was inevitable in the growth of railways and their construction from one town to another, that they should lengthen by union and additions until great trunk lines should reach from the Mississippi river to the Atlantic, on the one side, and from the same great river to the Pacific, on the other, and that there should be trunk lines, not so many, but still increasing in number, connecting the Canadian line of our country with the gulf and republic of Mexico.

The control of a single trunk line of the magnitude of one of these involves the wielding of great power over men and things. On the possibility of cheap transportation depends the existence or non-existence of markets. Therefore, the controller of a trunk line may, by the rates of transportation imposed upon the traffic, make or break, if he is permitted to exercise his power arbitrarily, the prosperity of any particular town or locality or individual situate only on this one line of railway and engaged in agriculture or manufacturing or other industry. He should treat each town and locality with absolute justice and equality,

and all individuals alike without the slightest discrimination in favor of any.

But the having of such a power as this has in times past tempted many controllers of railroads to use it for the benefit of one corporation as against another, for the benefit of one shipper as against another, for the benefit of one locality as against another, and sometimes to use it for the purpose of exacting freight rates in excess of those which reasonable compensation for the carriage and investment would justify. Generally the genius of the common law is found in the expression "caveat emptor," or in the homely phrase, "every man for himself and the devil take the hindmost."

The principal is that in the long run in this country where opportunities are equal and competition has its full sway, it is most unwise for Government by law to attempt to interfere with the economic law of supply and demand which fixes prices both for labor and for goods. It was always recognized, however, at common law, even in the days when coaches were the only means of travel, and when the heavy wagons or pack horses were the only means of transportation, that the economic law of supply and demand would not suffice to secure reasonable rates for either passenger or freight traffic as between the individual and the common carrier or owner of the coach or wagon line. The reason for the difference was that the single member of the public was not supposed to be able to deal on an equality with the public common carrier who enjoyed a franchise of dealing with the public and with respect to whom there was frequently not compensation sufficient to secure reasonable rates. Hence it was that at common law if a common carrier refused to carry goods at a reasonable rate and the owner of the goods paid an unreasonable rate, he might bring suit to recover back from the carrier the difference between a reasonable and unreasonable rate for the service rendered.



## REGULATION OF RAILROAD RATES.

The same rule obtains in all countries where there is any considerable amount of public travel, and laws have generally been adopted from time to time to regulate the charging of the railway rates. Some years ago the feeling that the railroads needed regulation manifested itself in the passage of the so-called interstate commerce law by the Congress of the United States. This provided for the appointment of an Interstate Commerce Commission, before whom complaints of excessive rates and of discrimination in rates might be lodged, and after a finding and order in favor of the complainant and a failure of the defendant railway company to obey the commission's order, a provision was made by which appeal could be made to the United States court to secure such compliance with the order as the court might deem proper.

I do not think it too much to say that the administration of the law under the Interstate Commerce law with amendments, has accomplished much and that conditions as to excessive and discriminating rates and rebates have been improved. But it is also true that inequality and injustice remain and the law has not accomplished all that was hoped for by those who passed it.

The proposed remedial bill as it has passed the House of Representatives attempts to give more power to the railroad commission so that its orders when made shall be effective until set aside by judicial hearing. It does not as yet provide for a general fixing of a table of rates by the commission, but only calls for a fixing of a maximum rate upon complaint with respect to a specific instance of injustice. It seems a moderate measure, calculated to give the added power to the commission necessary to effectiveness in remedying specific wrongs in rates without creating an all-powerful tribunal which shall in advance take away from railways the power of rate-making and of elastically responding to varying conditions. It will not thus

paralyze individual effort in meeting the changing demands of trade.

Just what remedy will be reached after the new Congress shall have considered the matter, after all the evidence has been heard, after they have become charged with the popular wish, of course we can not now anticipate, but we can certainly trust our lawgivers to respond to the popular demand and to regulate the railway so far as they ought to be regulated without interfering with that control over their own property and with that motive for efficiency and economic management which are still required to make successful the enormous business of railway transportation in America.

This question must be settled by the Republicans. Republicans may now differ as to the details, but in the end the Republican party, standing by the vote of a majority of its members and recognizing the necessity for party rule, will reach a result which will accomplish something.

One of the chief reasons for the continued success of the Republican party is the fact that its members, its leaders, its representatives, are all imbued and strongly imbued with a sense of responsibility to the people as to existing wrongs, with a sense of the necessity that some affirmative course in respect to them must be followed by the party, that some action must be the result of the party deliberations, that the extreme views of a rule or ruin obstructing minority must bend to the more moderate views of the majority, and that successful party government is a government by concessions with as large a measure of progress as men of views differing in detail but of the same general tendency, can attain.

The Republican party, by its enemies, is falsely charged with being a party of the corporations and a party of the wealthy. The history of its sacrifices in favor of human rights, and of its contests for individualism against socialism is a triumphant refutation of the charge. The charge is given a specious support

by the fact that the party sacredly respects the right of property as well as that of life and liberty, and therefore it labors to conserve the vested interests of the country; but such desire never prevents it in due course from making every effort to remedy the abuses for which such vested interests may be at times responsible.

Mr. Bryan represents an element of the Democratic party that is hastening as rapidly as possible toward a doctrine in which vested interests are little regarded. He is now formulating a doctrine in favor of the Government ownership of commercial railroads to which he hopes to lead his party. Against this proposition, I feel confident the Republican party will always set its face like flint.

I shall not stop to review the arguments against it or to point out what an immense stride towards socialism and against individual energy and thrift and industry Government ownership of commercial railroads would be. I only refer to it as Mr. Bryan's remedy for the abuses of which it is said the railroad companies are guilty and as an additional reason why, if such abuses exist, as, in some measure, we know they do, we should take all reasonable steps to remedy them in the direction of an increased and effective power of Government supervision and regulation, in order to meet the argument that Government ownership is the only cure.

Extract from Republican Platform, adopted at  
Columbus, Ohio, May 25, 1905.

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“We also endorse every effort for the active enforcement of existing laws to stop all unjust discriminations and special favors in the form of rebates or any other device and we favor such further legislation on that subject with adequate penalties as may, after full investigation, seem to the Republican Congress and administration wise and conservative, yet adequate to prevent unfair advantage to any, and to promote and insure the rights of all individuals in this and other localities.”

Extract from Democratic Platform, adopted at  
Columbus, Ohio, June 28th, 1905.

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“We demand of our Representatives in Congress to aid in the enactment of such laws as will prevent all rebates and secret contracts by railways, and will guarantee the same service to every citizen. We favor the conferring upon the Interstate Commerce Commission the power, when it finds a rate unreasonable, to fix a reasonable rate.”



**Extract from Speech of Senator Foraker at Bellefontaine,  
Ohio, September 23d, 1905.**

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**RAILROAD LEGISLATION.**

Another domestic business question has arisen with respect to the railroads. It has been charged that freight rates are too high, that rebates are secretly given and that discriminations are practiced, and it is proposed that all these evils shall be cured by conferring the rate-making power on the Interstate Commerce Commission.

A great deal of testimony has been taken of shippers and railroad officials and experts, and many interesting and valuable statistics have been gathered.

From this evidence it appears that there are various kinds of practices and abuses that should be prohibited, and there will no doubt be legislation of that character at the approaching session of Congress, for there can be no question about the power or wisdom of appropriate regulation of the railroad business of the country. But it also appears that the United States is much more fortunate in her railways than any other country.

The following article, based on an official bulletin issued by the Department of Commerce and Labor, appeared in *The Cincinnati Enquirer* a few days ago:

“Compilations made from foreign and domestic statistics show a freight rate on English roads per mineral ton-mile of 1.93 cents. A ton-mile of merchandise or live stock costs 2.94 cents, and on all commodities an average of 2.32 cents. Against these the figures for the United States are startlingly small, being 0.58 cent. On German roads it is 1.42 cent, on French 1.55 cent, Austrian 1.16 cent and Hungarian 1.30 cent.

**“RATES IN ENGLAND.**

“England’s passenger rates per mile, according to the business magazine, on the same classes as there cited for the United

States, were 4 cents, Germany's 3.8 cents. For their average day's wages workmen can travel as follows: American 65 miles, British 35 miles, Germany 53 miles, French 40 miles, Belgian 36 miles, Italian 38 miles and East Indian 21 miles.

"On American roads locomotive engineers average \$4 a day, England \$1.62, Belgian \$1.01; American firemen get \$2.28 a day, British 91 cents, Belgian 72 cents. Railroad laborers in the United States get from two to four times as much as on foreign roads. Forty per cent. of the gross earnings of the American railroads goes to labor, while only 25 per cent. goes to capital. In England labor gets 27 per cent., capital 38 per cent.; in Germany the division is equal."

It will be noted that rates are much lower in this country than in any other, although labor and other costs of operation are much higher. Shippers and railroad men alike confirm these statistics by testifying that rates in this country are on the average as low as could be expected, especially for long distances.

#### QUESTION OF REBATES.

With rates not higher than what is reasonable and just under all circumstances shippers are next most concerned about rebates. Every man wants to know, and has a right to know, that he is treated precisely as all his fellow-shippers are treated; that his competitors do not receive a preference that will enable them to undersell him and break him up and drive him out of business. For years the giving of such rebates was a common practice, resorted to by railroads in their competition with each other for freight traffic. Its unjust and ruinous consequences were universally felt.

To remedy this evil, with others, in February, 1903, the Congress passed what is commonly known as the Elkins law. The provisions of this measure were carefully considered and framed with a view to breaking up and destroying the whole rebate system, to the end that all shippers might enjoy the same rights and be treated with absolute equality in the use of the railroads of the country for interstate commerce.

It is very gratifying to be able now to state that railroad men and shippers alike testify with substantial unanimity that the law has been so successful in its operation that the granting of rebates has been practically discontinued, or that, if not wholly discontinued, the law has been found, by practical tests of its efficiency, to be ample, if properly enforced, to thoroughly accomplish its purpose.

#### DISCRIMINATIONS.

The remaining ground of complaint is that discriminations are practiced.

There are so many forms of discrimination that this charge is a very broad and serious one. There may be discriminations between individuals, between commodities and between localities. They may be practiced by giving rebates, by classification, by false weights, by refusing or neglecting to furnish cars equally and alike to all shippers, by allowing terminal charges, elevator charges, or by inequalities of rates as between different points, by charges for private cars, refrigerator cars, icing charges, etc.

The methods and devices resorted to are so numerous that it is almost impossible to enumerate them, but for every such discrimination, no matter how practiced, the law as it now stands was intended to provide a remedy.

The difficulty is not, therefore, with the spirit of the law, but with its text. The statutes applicable can be made much more explicit and effective, and as a result of the investigations that have been made and the consideration that has been given to this subject there will undoubtedly be appropriate legislation enacted at the next session of Congress to prohibit and punish in so far as it may be possible so to provide, all these discriminating abuses.

## MANY ONLY APPARENT.

But the truth is that, while there are many kinds of discriminations to be complained of, there are, on the other hand, many alleged discriminations that investigation has shown are only apparent.

For instance, the rate on freight from New York to San Francisco is less than half what it is from New York to Denver and other intermediate places, practically only half the distance. By comparison this looks like willful discrimination and extortion as against these intermediate points, but it isn't.

There is a good reason for what at first thought seems so inexcusable.

It has been shown that the rates to these intermediate points do not yield to the railroads more than a fair return for the service rendered; that they are not only reasonable, measured by that standard, but that they are much lower than the rates charged for a similar service in any other country.

The explanation for the difference is in the fact that the through rates to San Francisco are unreasonably low, due to the fact that the shipper from New York has an option to ship by water, and the railroads must accept the low rates charged for water transportation for the through haul or else lose the business altogether, and they prefer, inasmuch as they must make the haul anyhow, to take the business at these low rates rather than lose it altogether, notwithstanding if they could not make up for it elsewhere they would be bankrupted.

## CINCINNATI INSTANCE.

Cincinnati affords another illustration. That city is situated only about one-half the distance from Atlanta that New York is from Atlanta, yet New York has practically as low an all-rail rate to Atlanta as Cincinnati has, but why? Not because the railroads want to discriminate against Cincinnati, but because

the New York shipper has the advantage of water transportation, with its low rates, for the greater part of the distance to the near-by points on the coast.

Illustrations might be multiplied almost without number to show that what appear to be discriminations are in many instances found on investigation to be due to the law of competition and the result of natural forces and conditions, over which neither Congress nor the railroads have any control.

There are, however, many cases for which there is no such excuse, and for which we must and will provide an effective remedy. But it does not follow that to remedy these abuses the rate-making power should be conferred on the Interstate Commerce Commission, as the Ohio Democratic platform of this year proposes.

I believe such a provision is unnecessary to correct the evils complained of and that it would be both unwise and unjust.

The Interstate Commerce Commission is composed of five very capable, upright gentlemen, who have rendered good service, but neither they nor any other similar body, acting, as they must act, could satisfactorily discharge such a duty.

The Supreme Court said, as to the rate-making power, in what is known as the maximum rate case that, on account of "the large amount of property invested in railroads, the various companies engaged therein, the thousands of miles of road, and the millions of tons of freight carried, the varying and divers conditions attached to such a right, is a power of supreme delicacy and importance."

The rate making is probably the most complicated and difficult work connected with transportation. The railroads employ for this work the brightest and most skillful men they can find. These men command large salaries and earn them. Their work is of scientific character. It can not be done except by experts.

The railroad systems of the country have probably more than 5,000 men in their employment to-day doing nothing else but



making transportation rates for the traffic that is being hauled. Their work extends from ocean to ocean.

### CONCERNS EVERY SECTION.

It embraces every section, every commodity, every condition, every classification. It is their business not only to make rates that will yield proper revenue to the railroads, but also from time to time so to reduce, alter and change rates as to develop the country through which the respective roads pass, encourage new industries along their lines, meet new competitors that come into their territory, and from year to year, and month to month, and week to week, and day to day, and almost hour to hour meet the ever rapidly changing conditions that are brought about through the natural operation of the forces of trade and commerce.

They must, of necessity, meet as nearly as possible the requirements of their patrons. They must, therefore, not only make rates as low as justice to the railroads will allow, but they must make them interdependent, so that shippers can with facility send their products throughout the whole country.

A better way may be found of making these rates than that which is now in vogue, but I do not believe it possible for Congress to provide it by entrusting such a complicated delicate and vitally important duty to any such agency of its creation as is that which has been proposed.

There are serious legal questions involved in such a proposition. There are numerous difficulties of a practical character that must arise the moment the Government undertakes such a duty.

It is impossible on this occasion to take up these objections in detail. I content myself, therefore, with one or two general observations.

## FREIGHT BUSINESS DOUBLED.

During the last eight years the freight business of the country has doubled in volume. In consequence there has been and is now a congested condition everywhere with respect to the transportation of freight, and the railroads in consequence have been driven to the necessity of lowering grades, straightening curves, enlarging tunnels, strengthening bridges, multiplying equipment and increasing motive power to enable them to meet the demands upon them of the business of the country.

For improvements of this character they are shown to have expended during the last eight years the enormous sum of \$1,500,000,000.

From one end of the land to the other this kind of work is now in progress. If this increase of business continues for eight years more at the same rate of progression, and the indications are that it will, it will be impossible for the railroads to handle it, unless in the meantime, in addition to the general improvements mentioned, they double and quadruple their main lines, or double and quadruple their existing tracks and equipment.

## OF VITAL INTEREST.

In this work we are all vitally interested. We want it to go forward without let or hindrance, to the end that business may be conveniently and economically transacted, and also and especially that there may be the greatest possible safety for life and limb to the millions who travel. We should take heed, therefore, that we do not destroy or impair the enterprise or the credit and financial ability of the railroads to raise and expend, in the way indicated, the hundreds of millions necessary to carry forward this great work.

To take control of the rate-making power is to take charge of the revenue of the roads, and that means that the Government

is to assume the responsibility, not only of determining what rates shall be charged, but also of necessity how much money a railroad shall be allowed to make, and thus determine, also, of necessity, what improvements it shall be permitted to make, what extensions it may build, what equipment it must provide, what new tracks it may lay and what kind of service it shall render, for rates are so interdependent that there is no such thing possible as changing one without affecting many.

### DELUSION IS REFUTED.

Any other notion is a delusion refuted by conditions and experience. In short, if the Government is to determine how much money a railroad shall be allowed to make it must of necessity determine, also, what expenditures shall be permitted. None of these things can be escaped and none of them can be done by the Government so well as they are now being done by the companies themselves.

Such has been the experience of every country that has undertaken such a task, and will be ours also under similar circumstances.

The time was, and not very long ago, when it was a maxim recognized and advocated by all political parties, but especially by the Democratic party, that that country was best governed that was least governed. Now the tendency seems to be in the opposite direction; for every ill, real or imaginary, from which we may suffer, governmental relief or control is sought. Much good has been accomplished in this way, but the pendulum should not be allowed to swing too far.

Liberty of trade and commerce is the life that imparts competition and secures a healthy and vigorous development of our resources. If it be unduly hampered and restricted greater evils will result than we are now striving to escape.

## REPUBLICANS KNOW DUTY.

At another time I shall pursue this subject further. My only purpose now is to indicate the serious character of what is proposed and the necessity for the most intelligent and considerate solution of the difficult problem.

The Republican party is alive to its duty in this respect and will not desist from its efforts until it has worked out the best possible results.

We have 212,000 miles of railroads in the United States, and they have issued for their construction, equipment, improvement and maintenance \$14,000,000,000 in round numbers of railroad bonds, stocks and other securities, most of which are now held by our own citizens.

All classes of people and all kinds of business are interested in the subject and will be affected, favorably or unfavorably, by whatever may be done. A false step might work the most serious injury to the country's welfare and the people's prosperity.

It is not necessary to say that the Democratic party is incapable of satisfactorily dealing with such a complicated and difficult problem, because it is sufficient for present purposes and more agreeable, to say only that the Republican party is far better qualified for this most important work.

If this be true, we shall prove unfaithful to ourselves if we do not continue it in power, for it is our duty to all interests involved and to the country as a whole to choose at this time, as well as at other times, the most acceptable agency that can be secured for the administration of our public affairs.

**Interview with Senator Foraker, September 26th, 1905,  
as published in Cincinnati Commercial-Tribune.**

“There will doubtless be conflicting comments on what I said at Bellefontaine about the railroad question,” he said. “There are many who think the rate-making power should be conferred on the Interstate Commerce Commission, or on some other Governmental agency. The Ohio Democratic platform of this year declared in favor of that proposition. Mr. Bryan has been advocating it for years. The great mass of the Democratic party are in favor of that kind of legislation.

“A good many Republicans entertain the same view, but I do not believe it would be wise, and the Republicans of Ohio did not think so when they made their platform this year, for, although invited to do so, particularly by the speech made by Secretary Taft, who was the temporary chairman of the convention, they refused to make such a declaration.

“I was not at the convention and had nothing to do with that, but I was very much gratified to see the Republicans of Ohio take the stand they did. I think there is some difference of opinion on the subject among the Republicans of this state, but I am satisfied the sentiment is overwhelming against the proposition so far as the Republicans of Ohio are concerned, and I believe the same will prove true as to Republicans throughout the country.

“But, however that may be, it is an all-important question, far-reaching in its consequences, and it is well enough to have it discussed. The campaign affords a good opportunity for education. I will be very much gratified, indeed, if anything I have said shall lead to a discussion of the subject before the people. I have no opinions to conceal about anything, either at home or abroad, in the campaign or in the Senate, and my convictions on this subject are so positive that I have no question



as to what my duty may be. I do not know what any other Senator thinks about it, except as I have learned incidentally, for the question has not been presented to the Senate.

"The Interstate Commerce Committee, of which I am a member, has taken much testimony and made a painstaking examination of the matter. I do not know what any member of the committee will do, except in a general way, but it is my impression that a majority of the committee will oppose conferring the rate-making power on the Interstate Commerce Commission."

In answer to a question as to whether such an attitude upon the part of the majority of the committee would not precipitate a conflict between President Roosevelt and the Senate, Senator Foraker said:

"I do not know what the views of the President may be at this time. He recommended in his message of last year that the rate-making power be conferred on the Interstate Commerce Commission. He is probably still of the opinion that it would be wise so to legislate. It is a matter about which there can be difference of opinion, and whatever his opinion may be, it is, of course, his duty to recommend it to Congress if he wants it embodied in legislation.

"But the question has been more fully investigated since he made that recommendation than it had been before, and it may be that his views have undergone some modification. However that may be, what the President wants, and what everybody else wants, is a remedy for the evils that the people are justly complaining of. I do not imagine that the President cares in what particular way it is done, so that it is done in the best way and efficiently, and that is the way we propose to do it.

"The question is not a party question, or if it is it is a Democratic proposition, which has had Mr. Bryan for its chief advocate for a number of years, and now it has the Democratic party of Ohio committed to it by its platform."

It has been repeatedly intimated that Senator Foraker will be the author of the bill which the majority of the Interstate Commerce Committee will report to the Senate this winter, and he was asked if it were true, or if he would introduce a bill on the subject.

“I do not know what kind of a bill the committee will report,” he replied, “and if I did it would be out of place for me to tell about it in advance. I have some ideas, however, of my own as to what the measure should be, and if the committee does not agree upon one I shall feel free to introduce a bill on my own account.

“I think there are some very gross abuses that we should provide against, and I think I know what kind of legislation will effectively cure practically all of the complaints I have heard of.”

Interview with James J. Hooker, published in  
Cincinnati Post, September 27th, 1905.

James J. Hooker, executive committeeman Receivers' and Shippers' Association; leading merchant and prominent Republican, said:

There is nothing surprising about Senator Foraker's attitude on the rate question. When eight or ten members of the Receivers' and Shippers' Association called on him about four months ago, during the time the Esch-Townsend bill was pending in Congress, the Senator professed to have an open mind in the interstate commerce legislation.

But when the committee left his office there was an interchange of views among them, and, without exception, the opinion was that the Senator was with the corporations and against the people on any railroad legislation.

The Ohio Republican State Convention put itself upon record in regard to this legislation in rather an ambiguous way, as is usual with state conventions on important issues. But the intent of the resolution certainly was to array the Republican party in support of President Roosevelt's policy in the enactment of interstate commerce legislation that would give authority for the substitution of reasonable rates for those that were deemed unreasonable and unfair.

The Senator, like all who are with the railroads, does not state the question fairly. It is not proposed by those who are with the President that the rate-making power shall be turned over to a commission to make all the rates to and from every shipping point in the United States, on every class of merchandise.

The Official Railway Guide names 64,050 railroad stations in the United States. Official classification No. 22 enumerates

7174 different articles. Therefore, those who are with the railroads on this important question would have the public believe that a commission should be given the right to make 459,694,700 different rates. Is not this an insult to the intelligence of the American people? Its absurdity scarcely needs comment.

What President Roosevelt stands for is that where a rate is found unjust and unreasonable there should be some tribunal empowered to say what is a just and reasonable rate. And the America people are behind him upon this proposition. As an example, if Cincinnati is to grow into a great city it must come through acting as an intermediary in an exchange of products between the North and South.

In the rates on southern products into the territory north of the Ohio river, and on products of Cincinnati manufacturers in the territory south of Chattanooga, the great majority of rates are unfair and unreasonable. The southbound rates were made more than twenty-five years ago—before the great expansion of manufacturing in the middle west.

The principle of making northbound rates on all southern commodities can be illustrated from that on cotton goods. From the Georgia cotton milling points to Cincinnati proper the rate is 49 cents per 100 pounds. But the same goods, if destined to Indianapolis, Chicago and other northern distributing points, take a rate of 35 cents per 100 pounds to Cincinnati.

There is not a practical traffic man connected with a railway north of the Ohio river who will attempt to defend the injustice of such a rate. The attention of Senator Foraker has been called to this particular injustice, as illustrating the principle of making northbound rates on lumber, pig iron, cotton and every other product of the South.

And the Republican voters of Ohio may well ask why Senator Foraker is against the interests of every manufacturing state which finds a market in the South for its products or obtains its raw material and manufactured goods from that section.

**Interview with Senator Foraker in answer to the interview  
of Mr. Hooker, as published in Cincinnati Com-  
mercial-Tribune, October 6th, 1905.**

In reply to Mr. J. J. Hooker's statement on the subject of railroad rates, Senator Joseph B. Foraker has made public the following:

"My attention has been called to Mr. Hooker's interview of September 27, and I have read it over very hastily, but I think I catch the point of it all. I dislike to appear to have a controversy with any of my fellow citizens, especially any of my personal friends, one of whom Mr. Hooker has been for many years, but his interview is of such character that I desire to make a pretty plain answer to it.

"In the first place, assuming Mr. Hooker has a grievance, what I have in mind, and hope to see enacted, will provide for him a far better and more satisfactory remedy than what he proposes. But I let that go for the present that I may speak of Mr. Hooker's case. As I understand it, he has a dye house in Covington, Kentucky, where he dyes products from the cotton mills of the South, most of which are located in Georgia and in the Carolinas. He tells us that because he has to stop the goods he treats at Cincinnati, take them off the cars, dye them, repack and reship them, he does not get the benefit of the through rate that is allowed his competitors who have their bleacheries and dye houses in the vicinity of the cotton mills, and who have to ship only once, therefore, to reach Chicago.

"I think it will be manifest to anybody who thinks for a moment, that Mr. Hooker made a mistake in not locating his bleacheries, or dye house, at one end or the other of the road over which he is to ship, for he could hardly expect to get the benefit of the through rate, breaking his shipment at Cincinnati.



“But why is it that the rate on the products he treats from Atlanta to Cincinnati is 49 cents per hundred, and why is it that the rate on a through shipment from Atlanta to Chicago is only 55 cents per hundred, of which the proportion of the shipment from Atlanta to Cincinnati is but 35 cents per hundred as against 49 cents when the shipment stops in Cincinnati.

### COME IN COMPETITION.

“Mr. Hooker and every other man who has practical experience as a shipper knows the reason, and knows that it is something in a certain sense beyond the control of the railroads. It is due to the fact that the moment the products of the cotton mills of the South reach the Ohio river at Cincinnati they come in competition with the products of the cotton mills and the bleacheries and dye houses of New England. The rate from New England and New York to Chicago is 55 cents. To Cincinnati it is 87 per cent. of 55 cents, or about 49 cents.

“This being the case, the cotton mills of the South must have as low a rate to Cincinnati as the cotton mills of New England have, or be barred out of Cincinnati. And, on the other hand, the cotton mills of New England must have as low a rate to Cincinnati as the cotton mills of the South have to Cincinnati, or they will be barred out. The result is that the rate is practically the same, and necessarily so, from the mills of New England that it is from the mills of the South to Cincinnati.

“If the southern roads were to reduce the rate below 49 cents the trunk lines from New England and New York would have to make a corresponding reduction to protect their shippers in the Cincinnati market. So the rate can not be either higher or lower than that which is fixed on products from the South unless there is to be a general upsetting of all the rates from both the South and East to Cincinnati. In other words, these rates are so interdependent that the disturbance of one involves the disturbance of thousands of others.

“Now as to the through rate from Atlanta to Chicago, the same reasons that fixed the rate at 49 cents from the South and New England to Cincinnati fixed the rate from both places to Chicago. If the New England mills can get into Chicago on a 55 cent rate the southern mills must do the same or stay out.

#### NOT ARBITRARY.

“In other words, it is not an arbitrary, dictatorial arrangement of the rates, but it is the law of competition and the natural operation of commercial forces that have fixed the rate to Chicago from both points. But if the shipper from Cincinnati is to be charged the full 49 cents on the through shipment to Chicago there would be left only six cents per hundred to pay the Northern roads for the haul from Cincinnati to Chicago, which would manifestly be unjust to the roads north of the Ohio river.

“In other words, inasmuch as the rate can be only 55 cents from the South because it is only 55 cents from New England, it must be so apportioned that the roads south of Cincinnati will get less than the full rate on shipments stopping there, and the roads north from Cincinnati to Chicago will have to take also a proportionately less rate; so the through rate being only 55 cents, and it not being possible to make it more than that, the Cincinnati portion of the through rate is by agreement reduced to 35 cents, and the portion north from Cincinnati to Chicago is reduced from the local rate of 25 cents to 20 cents.

“Mr. Hooker located his dye works in Covington before any such establishments were located near the cotton mills of the South, and when only a very cheap grade of goods was produced by the Southern cotton mills, and only a limited amount of such goods. But the cotton industry of the South has been growing beyond all calculation since it has been ascertained that the cli-

matic conditions of Massachusetts are not necessary to the successful milling of cotton, as was maintained for many years.

### CHANGING CONDITIONS.

“The cotton mills of the South now handle practically as much of the cotton crop of the country as the cotton mills of New England handle, and the quality of their products is rapidly improving, so that it is now claimed to be substantially as good quality as the New England mill product. Consequently there is sharp competition, which Mr. Hooker did not perhaps foresee when he located his mill in Covington, but which he has been feeling more and more each year, and will continue to feel more and more hereafter. It is these changing conditions that make rate-making so complicated and difficult that only experts are equal to its requirements.

“But even the experts are unequal to the task, and there are of course many injustices and inequalities and abuses, although not anything like so many as there were a few years ago.

“The Congress took up this matter some years ago and commenced a most careful investigation of the subject with a view to providing as far as legislation can provide against all wrongs and abuses of every kind. The first thing we discovered was that rates are not in and of themselves too high. Mr. Hooker so testified before our committee, and practically everybody else so testified, but we found that at that time rebates were being secretly given by almost every road in the country, each road claiming that it had to give rebates because its competitors gave them. Most of these rebates were not given outright and directly, but by some kind of device, or under some guise or arrangement, that was intended to cover up the fact that they were rebates.

“This is the worst abuse that shippers have ever been subjected to at the hands of the railroads. There has been for

years a common outcry against it, and a common denunciation of its injustice.

### THE ELKINS LAW.

“Finally, as a result of our investigations, we passed in February, 1903, what is known as the Elkins law, the purpose of which was to break up rebates and discriminations. We made the statute sweeping in its character, specific in its purpose, and imposed heavy penalties to make it effective, and provided for summary proceedings in the courts to enforce it. The result was that promptly there followed almost entirely a discontinuance by all the roads of the practice of giving rebates. They recognized the injustice of it and the propriety of drastic legislation and penalties, and would not longer take the risk of continuing such a practice. That legislation was enacted without any recommendation from the President or anybody else, and it can be safely said it has been the most salutary legislation in connection with railroad legislation the country has ever had.

“But it had developed that Mr. Hooker, who had an unfortunate location of his dyehouse which deprived him of a right to through rates, had resorted to a plan for overcoming that trouble. He started what he called the Quick Transfer Company, which he tells us was an unincorporated company organized by Putnam, Hooker & Co.; the truth is it was simply the Putnam-Hooker Company, and nobody else. Nobody else had anything to do with it. It did not do business for anybody else. The business of this transfer company was to take the unbleached and undyed products of the cotton mills of the South on their arrival at Cincinnati out of the cars and haul them to the dyehouse of Putnam, Hooker & Co., and after there depositing them, for treatment, loading up with an equal amount of goods which had been treated and haul them back to the train and put them on board, and then send them on to Chicago, or other destination. For this transferring Putnam, Hooker & Co. was al-



lowed the difference between local rates and through rates, but it was doing nothing to get such an allowance except only what it would have had to do anyhow, and there was not, therefore, any service to the railroads for which he was entitled to compensation from them, yet the railroads made them the allowance mentioned, if they had knowledge, or he was getting it without their permission if they did not have knowledge. In other words, he was getting a rebate for that was all it was.

#### PURELY A REBATE.

“That Quick Transfer Company went out of business before the Elkins law was passed, on complaint of Mr. Hooker’s competitors, who found out the advantage he was by that agency securing. After the Quick Transfer Company disappeared an allowance of three cents a hundred was made Mr. Hooker from the local rate, under the guise of charges for transfer from the railroad to the dyehouse. This also was only a rebate pure and simple, and just the kind of thing that had given rise to so much trouble and so much complaint among shippers. When the Elkins law was passed that form of rebate, along with every other kind, was no longer practicable.

“Congress had reached effectively the greatest injustice of which the shippers had ever complained, and Mr. Hooker and tens of thousands of others who had been getting rebates under one form and another were deprived of them. Since then he has been very active in complaining about the injustice of the relative rate adjustment, and has been generally without ‘good opinion of the law.’

“Nearly two years ago he appealed to the Interstate Commerce Commission for relief. There has been much testimony taken, with which, in a general way, I am familiar. Among other witnesses who testified was Mr. Hooker, who, in his testimony, set forth in answer to questions that were asked of him, practically the same information I have given here. The Inter-



state Commerce Commission has not yet decided Mr. Hooker's case. I do not know how they will settle it. They may find that he is not entitled to any relief, and dismiss his petition, or they may find that he is entitled to relief, and grant it, but that does not end the matter, even, according to the legislation Mr. Hooker is asking for, because if the railroads should be dissatisfied they could then take the case into court and there try it all over again.

"I think such a performance a discredit to the law, and that instead of a shipper who has a just complaint being compelled to go to the expense and trouble of a long and tedious trial before the Interstate Commerce Commission, and then afterward before the court, he should be given a prompt and efficient remedy at the outset, the same that all other litigants are supposed to have, and I will be greatly disappointed if the legislation Congress enacts is not a great improvement on what is proposed.

"I do not care to reply in detail to what Mr. Hooker has said about pig iron, lumber and other products from the South having through rates to points of destination north of the Ohio river at proportionately lower rates from the points of origination to the Ohio river than the rates are from such points to the Ohio river when the commodity stops there, but everybody knows who is familiar with the subject that the moment the pig iron of the South crosses the Ohio river it comes into direct competition with the pig iron of the Pittsburg and other districts, and that this competition increases and through rates must therefore be lower the nearer the points are to Pittsburg and other northern points of destination.

#### CINCINNATI'S ADVANTAGE.

"Another time I will be glad to elaborate all of this, but inasmuch as this interview is already too long, I will stop to add only one other thought, and that is an expression of regret that when 'Industrial Leaders,' so-called, are talking about Cincinnati

they never speak of anything except Cincinnati's disadvantages. For Louisiana products Cincinnati is about twice as far distant from New Orleans as Atlanta is, and yet, because of river transportation, we have a lower rate than Atlanta, or any of the other similarly situated places. We have corresponding advantages over interior Ohio cities because of cheap water transportation on shipments from the country constituting the Ohio Valley and that which is tributary to the Ohio Valley.

“When one undertakes to legislate at Washington he must take into consideration, not only one particular dyehouse located in Covington, Kentucky, but all of the other dyehouses throughout the country. He must consider the relations of the South and New England to the Northwest and all the other points of our great country. It is a hard thing for him to know sometimes just what is the wisest and best thing for him to do, and he doubtless makes some mistakes, but I have never favored or opposed any legislation without at least knowing what my reasons were for my action, and any time, place, or company is agreeable to me to state those reasons to my constituents, or anybody else who desires to know what they are. Hence, if anybody wants a conference, meeting, or debate, I will be glad to accommodate him.

“I have prominently dealt in this interview with only one of the complaining shippers, but I will be glad in other interviews, or speeches, or conferences to deal with every one of them who may see fit to come forward as Mr. Hooker has with an exploitation of his particular complaints and the grounds for the same.

#### AS TO PERSONAL INTEREST.

“Finally, at the close of this interview, I notice that Mr. Hooker says that the shippers of Ohio will call upon me to state why I favor the corporations as against the people, and puts his statement in such language as to indicate that there is probably some improper reason for such alleged action on my part. To

begin with, I am not favoring corporations, or shippers, or anybody else at the expense of any other class or classes. I have studied very diligently this whole subject, with the result that I have some convictions as to what is right and best for our common country and all the interests involved.

“In this whole matter I have had no thought of personal interest of any kind whatever, but if I did have any such thought, or if I could have prejudice or be influenced by personal interest, the shippers would get the benefit of it, for while I have been at times to a limited extent interested in the railroads, yet there has never been a time when my interest was not far greater as a shipper. It is now many times greater, for practically I no longer have any interest whatever in any railroad, nor in any other corporation that has any interest in this proposed legislation, while I am interested in companies that do a large amount of shipping.”

Open Letter to Senator Foraker from Receivers and  
Shippers Association of Cincinnati.

"CINCINNATI, OHIO, October 12, 1905.

"SENATOR J. B. FORAKER,

"Cincinnati, Ohio.

"*Dear Sir:* Your attitude on railroad rate regulation, as explained in your speech at Bellefontaine, Ohio, September 23, and the statements made therein, are considered by the board of directors of the Receivers' and Shippers' Association of Cincinnati as calling for criticism and reply, especially as your recognition of it as a business question, and one without political significance, relieves us of any possible charge of endeavoring to influence in any way the result of the present campaign in Ohio.

"The transportation conditions in England and the United States are so much at variance that your argument concerning same can have no weight with those who are familiar with these conditions, although it must impress those not conversant with the subject. You say:

"'To take control of the rate-making power is to take charge of the revenue of the roads, and that means that the government is to assume the responsibility, not only of determining what rates shall be charged, but also of necessity how much money a railroad shall be allowed to make.'

"No proposed legislation that we know of would have any such effect. The Esch-Townsend bill, which passed the House of Representatives at the last session almost unanimously, provided for the substitution of a reasonable rate for one found by the Interstate Commerce Commission to be unreasonable. It is safe to say but a small percentage of the rates in effect in the United States would ever be called into question.

"In your statement in answer to Mr. James J. Hooker, you say:

“ ‘I think it would be manifest to any one who thinks for a moment that Mr. Hooker made a mistake in not locating his bleacheries or dyehouse at one end or the other of the road over which he is to ship.’

#### SHOULD LEAVE CINCINNATI.

“On the principle you suggest every iron foundry and every consumer of pig iron in Cincinnati should move to Birmingham, Ala., or to Chicago or Cleveland; every rolling mill should move to Birmingham or Pittsburg, and every manufacturer of door-sash, blinds, furniture, vehicle bodies, white lead, etc., should establish his manufactory either at the source of supply of raw material or else at some point beyond Cincinnati, at which the finished product is finally marketed. Also, all our hay and grain dealers handling through shipments should remove their elevators to the country districts, where the hay and grain originates.

“We will not take the space to follow this thought further, except to say that your theory would deprive Cincinnati of many of its industries. The manufacturing and commercial interests of our city can not stand for any such absurd theory.

“On December 22, 1904, the board of directors of this association called on you at your office to urge you to support legislation which would confer upon the Interstate Commerce Commission the right to substitute a reasonable rate for a rate which, upon careful investigation by the commission, has been found to be unreasonable.

“The matter was discussed quite at length. You seemed interested, and from the inquiries you made you had doubtless previously heard one side of the question only. We were glad to have that opportunity to place before you information sufficient to convince any fair-minded person that the mercantile interests of the metropolis of the state, which you represent in the United States Senate, were suffering through an unjust and unfair discrimination in railway rates. Surely it was not too much for us



to expect that, having a Senator of commanding influence (a fellow citizen) to represent us, our cause would be safe in his hands. Our hopes were dissipated, however, when at the hearings before the Senate Committee on Interstate Commerce, during the summer, you seemed to ignore the appeals made to you by the receivers and shippers of your own city and lean to the side of the railways.

### NOT HOSTILE TO RAILROADS.

“And right here we want to say that we are not hostile to the railways in any sense; we have given them all that it was possible for us to give, we have fairly turned our city over to them, and what we ask in return is that in transportation charges we shall be put on an equality with our competitors North, South, East and West. In the great competitive struggle for trade growing keener and stronger all the time, we must and shall have, in the matter of rates, what our worthy President calls ‘a square deal.’

“We feel hopeful that when you have full knowledge of the injustice which our shippers are forced to bear under the established schedule of rates for cities in the Central West, and your own city in particular, you will be ready to join hands with President Roosevelt in the passage of remedial legislation which will insure equal rights to all and special privileges to none.

“The Receivers’ and Shippers’ Association embraces a membership of nearly 300 of the largest shippers in this city. The organization is supported by the contributions of its individual members, and may be truly called a representative body. Surely such a body of supposed intelligent business men would not be foolish enough to put itself on record as complaining of a grievance which you say is more apparent than real. Therefore, your utterance in your Bellefontaine speech is misleading. You say:

“ ‘But the truth is that while there are many kinds of discriminations to be complained of, there are, on the other hand, many alleged discriminations that investigation has shown are only apparent.’

“ ‘Cincinnati affords another illustration. That city is situated only about one-half the distance from Atlanta that New York is from Atlanta, yet New York has practically as low an all-rail rate to Atlanta as Cincinnati has, but why? Not because the railroads want to discriminate against Cincinnati, but because the New York shipper has the advantage of water transportation, with its low rates, for the greater part of the distance to the near-by points on the coast.

#### STATEMENT CONTRADICTED.

“ ‘A flat contradiction to this statement is found in the report of the Interstate Commerce Commission in the findings relating to the case of rates from New York to Atlanta, versus Cincinnati to Atlanta. Here is the language used by the commission :

“ ‘The weight of testimony of railroad officials connected with the roads leading from central territory to the South, as appears from our findings of facts, tends to show that the idea is prevalent in Western railroad circles that the adjustment of rates from central and Eastern territories is unjustly prejudicial to the former and that those roads and lines, south as well as north of the Ohio, are disposed to favor a readjustment of their rates on a basis more favorable to central territory, but that they have not done so on account of their alliance with the Eastern lines as members of the Southern Railway and Steamship Association, the latter lines not being willing to agree to such a readjustment.

“ ‘Our conclusion on the whole is that, as charged in the complaint of the Chicago case, the rates on the numbered classes from Cincinnati and the Ohio River crossing to the South are unreasonably high, and as they enter into the through rates from Chicago, that those through rates, as well as the rates from Cincinnati, are excessive.’

“ ‘And then after prescribing what in its opinion was reasonable rates from Cincinnati to Atlanta, the commission says:

“If the rates by the Eastern seaboard lines be taken as the standard of comparison, the rates in these tables will be found to make, in the main, due allowance for the estimated effect on those rates of water competition via the Atlantic.’

“The commission’s finding in the Cincinnati case shows that upon a most thorough investigation it was discovered that the discrimination in rates against our city was actual and real and not simply apparent, as you state. Furthermore, if you are informed on the subject you are aware that at a meeting of the executive officers of the Southern lines held in New York on December 1 and 2, 1904, a basis was adopted for making new rates from New York to Atlanta, Ga., which practically ignored water competition.

#### THE CINCINNATI SOUTHERN.

“You are also aware that the people of your home city have spent \$18,000,000 to build a railroad from Cincinnati to Chattanooga in order to reach the South under equitable freight rates, and that they have paid an additional \$12,000,000 in taxes to meet the interest on Cincinnati Southern Railway bonds over and above the rental income. Yet in your Bellefontaine speech there is an apparent attempt to nullify all of the benefits which should accrue to your fellow townsmen from their vast expenditure of money, many sacrifices and great efforts in the building of the Cincinnati Southern Railway.

“While the wholly unjustifiable statements you make in your Bellefontaine speech and more recent interview apparently show a disregard for the interests of your fellow townsmen in favor of the railroads, yet we are slow to think that you would deliberately take such a position. You certainly can not afford to oppose the effort our citizens are making at the present time for a redress of grievances and fair play at the hands of the railways. As the representative of the people your proper place is on the side of the people, safeguarding their rights against the encroachments of corporations. There can be no

straddling on this question; you must either be with us or against us. We will be glad to have you espouse our cause in this struggle. We recognize your powerful influence in the Senate and admire your great abilities, but if you turn away from us the fight will still go on. This assertion is made with the confidence that there is a man in the presidential chair who has the people behind him and with him to an extent that has never been the case in any previous administration. . He is Chief Magistrate of the nation and of the whole people and the people believe they may look to him to cross swords even with the Senate of the United States, with the assurance that as their champion he will come off victor in the contest.

“You intimate that you have in mind a plan which, in your judgment, is better than the plan to confer upon the Interstate Commerce Commission the power to substitute a reasonable rate for a rate which, after a complaint has been duly made and after a full hearing, has been found and declared by the Interstate Commerce Commission to be unreasonable or unjustly discriminatory.

#### ANSWERS WANTED.

“We would like for you to answer fully the following questions:

“Under the present law the courts have decided that while it is permissible for several lines to make joint through rates, they are not required to do so. Under the plan which you have in mind, could the carriers be required to make reasonable joint through rates? If so, how?

“Under your plan, if it was determined that the rates from Cincinnati to Atlanta, Ga., were unreasonably high and discriminatory as compared with the rates from Richmond, Va., to Atlanta, Ga., and the carriers were required to make a reduction in the rate from Cincinnati, what would prevent the carriers

from Richmond, Va., to Atlanta from making a reduction corresponding to that made from Cincinnati?

“Upon complaint being filed and a hearing had, and a given rate has been determined to be unreasonably high and excessive, or unduly discriminatory, under your plan, could either a maximum, minimum or absolute rate be substituted therefor to apply for the future? If so how?

“Assuming that the rates from Cincinnati to Chattanooga are unreasonable, high and discriminatory, as compared with the rates from New York to Chattanooga to the following extent:

1	2	3	4	5	6
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
25	16	20	22	20	13

in cents per hundred pounds, how could a discrimination of this character be effectually removed under your plan?

“It is clear to us how this kind of a discrimination can be done away with if the Interstate Commerce Commission is authorized to substitute a reasonable rate for a rate which, upon complaint and formal hearing, is found and declared to be reasonable to the above extent; but what the Cincinnati shipping public is interested in is how this same sort of discrimination can be effectively removed under your plan.

“There are other questions which we may ask you to answer later.

Yours truly,

“R. H. WEST, *President.*”



**Answer of Senator Foraker to the Open Letter from  
Receivers and Shippers Association.**

CINCINNATI, OHIO, October 13th, 1905.

HON. R. H. WEST,

President Receivers' & Shippers' Association,  
Cincinnati, Ohio.

*Dear Sir:* I have just read in the morning newspaper the open letter to me of your Association signed by you as its President, making certain statements and asking me certain questions with respect to my views in regard to the subject of railway rate legislation.

You say in the course of this communication: "There can be no straddling on this question. You must either be with us or against us." This is not very respectful language, but inasmuch as it is the first time I ever heard of anybody intimating or insinuating that I ever "straddled" in regard to any public question, I shall waive any right I may have to take exceptions to it.

Your very lengthy letter, coupled with the interviews that have appeared in the newspapers with members of your Association, and the tone of your communication, all combine to show pretty conclusively that you do not think there has been, or is likely to be any "straddling" on my part in regard to this question. But that it may be made perfectly clear that there is not, I shall answer your letter in detail, quoting each material statement and each question, and in the order in which you have set them forth as nearly as I can, making specific answer to all.

I said in my Bellefontaine speech, that I think there are many abuses and evils that shippers are now subjected to for which the law should afford a speedy and effective remedy, and that I am

heartily in favor of enacting such legislation as will secure such a result, but I do not believe it will be effective or be wise, or, in short, be anything but disastrous, to confer the rate-making power on the Interstate Commerce Commission. I have not changed my opinion. The difference between your Association and myself is not, therefore, one as to results, but simply as to what the remedy should be for acknowledged evils.

Proceeding now, as above indicated, your first statement is that conditions in England and the United States are different and that comparisons between relative conditions of the two countries are, therefore, without value. It is true there are many differences between conditions in England and the United States as there are between conditions in the United States and conditions in France, Germany, Russia and Austria, respectively. But, it is also true, as stated in my Bellefontaine speech, that railroad rates without any government regulation, but simply as the result of natural competition between roads, localities and competitors, have been reduced in the United States to the very low rate, unheard of in the history of the world outside of our own country, of .76 of a cent per ton per mile, while in France they are 1.33, in Germany 1.22, in Austria 1.26, in Hungary 1.24 and all this in the face of the fact that cost of labor, materials and operation generally is from 25 to 50 per cent. higher in the United States than in any of these other countries. In view of this state of facts, I said at Bellefontaine, while there were many evils to complain of, yet upon the whole, by comparison, "it appears that the United States is much more fortunate in her railways than any other country." I am still, notwithstanding all you have said in your letter, of that opinion.

You next quote from my Bellefontaine speech my statement, that

"to take control of the rate-making power is to take charge of the revenues of the roads, and that means that the government is to assume the responsibility, not only of determining what rate

shall be charged, but also of necessity how much money a railroad shall be allowed to make.”

You might have quoted further to the same effect, but I stop where you do. You then add—

“No proposed legislation that we know of would have any such effect. The Esch-Townsend bill, which passed the House of Representatives at the last session almost unanimously, provided for the substitution of a reasonable rate for one found by the Interstate Commerce Commission to be unreasonable. It is safe to say that but a small percentage of the rates in effect in the United States would ever be called in question.”

That conferring the rate-making power on the Interstate Commerce Commission means that the Government is to assume the responsibility, not only of determining what rates shall be charged, but also of necessity how much money a railroad shall be allowed to make, is precisely what the Supreme Court held in effect in the Maximum Rate case; and precisely what Governor Cummins recognized when, in his testimony before the Senate Committee, he stated he thought rates should be so adjusted as to not allow a railroad to make more than seven per cent. on its investment.

But passing that, your statement develops what, to my mind, is the fatal fallacy of the Esch-Townsend bill, and any other similar proposition to confer the power it proposed to confer on the Interstate Commerce Commission. It proceeded, as your Association has, in its letter to me, upon the theory that it is possible to challenge a single rate as unreasonable, have it condemned, and substitute therefor *one* other single rate. I do not believe it possible to do any such thing. Rates so overlap each other and are so interdependent that they are woven together in a manner that makes it impossible to single out one that is complained of and change it without at the same time changing hundreds and perhaps thousands of others. Take for illustration the rate Mr. Hooker and I had something to say about in our respective interviews on the products of the cotton mills of

the South to Cincinnati. That is a commodity rate of 49 cents from Atlanta to Cincinnati. Why is the rate fixed at 49 cents? Everybody knows it is fixed at that particular figure because of the rate on the products of the cotton mills of New England to Cincinnati; and everybody knows, who is familiar with the subject, that the rate on the products of the cotton mills of New England to Cincinnati is governed by the rate from those mills to Chicago; and so, too, everybody knows that if you change the rate either to raise it or lower it from Atlanta to Cincinnati there must be corresponding changes on the other rates referred to, and that these corresponding changes will extend not only to Chicago and Cincinnati, but to every intermediate city and point. This is not a matter affecting the revenues of the railroads alone, but it is a matter of the highest importance to the people of Cincinnati and to every other community that rates should be so adjusted that the competing products from different parts of the country can come into the markets of these respective communities, and there come in competition with each other to the end that thereby we may have the advantage of the low prices that competition naturally brings to the consumer. That is to say, we do not want, as a community, the rates so adjusted that one section will bar out the other. We want the commodities of both.

New River coal affords another illustration. The local rate from the New River coal field to Cincinnati is 95 cents a ton, but if the coal is shipped through to Chicago, the Cincinnati portion of the through rate is cut down to 67 cents a ton. Everybody familiar with the subject knows this is not an arbitrary arrangement of the railroads, but that they are forced to make the low through rate because the Creator in His omniscience saw fit to place coal fields in the Hocking Valley, and in Pennsylvania, and in Indiana, and in Illinois, and in Iowa, as well as in West Virginia, and that when the coal of the New



River district undertakes to compete with the coal from those other fields it is unable to do so, unless it is given a rate that places it on at least a reasonable approach to equality in their common market. If, therefore, the rate on the New River coal to Chicago should be challenged, instantly would come up the question, not whether that one single rate from point to point named was reasonable in and of itself, but whether or not it was reasonable and just in comparison with all these other competing rates, and there could not be a change of that rate without correspondingly changing all the other rates. In other words the theory upon which the Esch-Townsend bill proceeded, and upon which your communication is based in this respect, seems to me to be fallacious. I am not alone in this opinion.

One of the ablest men who appeared on behalf of the shippers before the Interstate Commerce Committee of the Senate was Judge S. H. Cowan, of Texas, who represented the Texas Cattle Receivers Association and the Cattle Growers Interstate Committee. He said in the course of his testimony, giving an account of the proceedings he had been conducting against the railroads before the Interstate Commerce Commission to have a rate condemned as unreasonable, as an explanation why so much time had been occupied—more than a year—that

“it involves all the rates in the state of Texas, in southwestern Texas, in the state of Texas, in southwestern Kansas, in Colorado and Arizona from points to Wyoming and to market under various conditions.”

The Interstate Commerce Commission in the Maximum Rate case, which you cite, found it necessary in order to change the particular rates complained of to change more than 2,000 rates, and one of the chief causes of dissatisfaction with their decision was that it did not change so as to correspond many other rates.

Judge Cooley, universally recognized as the ablest man who ever sat on the Interstate Commerce Commission, while Chairman of the Commission, in discussing this question said:



“The Commission would (if required to exercise this power) in effect be required to act as rate-makers for all the roads and compelled to adjust the tariffs so as to meet the exigencies of business, while at the same time endeavoring to protect relative rights and equities of rival carriers and rival localities. This in any considerable state would be an enormous task. In a country so large as ours and with so vast a mileage of roads it would be superhuman. A construction of the statute which would require its performance would render the due administration of the law altogether impracticable.”

In the Maximum Rate case when it came before the Supreme Court that court said in its opinion, reversing the Interstate Commerce Commission:

“There is nothing in the act requiring the Commission to proceed singly against each railroad company for each supposed or alleged violation of the act.” (Neither is there in the Esch-Townsend bill or in the proposition of your Association.) “In this very case the order of the Commission was directed against a score or more of companies and determined the maximum rates on half a dozen classes of freight from Cincinnati to Chicago, respectively, to several named southern points and the territory contiguous thereto, so that if the power exists, as is claimed, there would be no escape from the conclusion that it would be within the discretion of the Commission of its own motion to suggest that the interstate rates on all the roads in the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such a hearing make one general order, reaching to every road and covering every rate.”

Many other citations might be made to the same effect, but it is unnecessary in view of this statement of the Supreme Court of the United States, and the further fact that in the closing paragraphs of your letter you recognize all this by calling attention to the fact that it would not help Cincinnati in the relative adjustment of the rates of which you are complaining, unless when a reduction of rates from Cincinnati to southern points is made a corresponding reduction can be prevented to those same points from Richmond and the northeast Atlantic seaboard cities, and then say, after laying these premises:

“It is clear to us how this kind of discrimination can be done away with if the Interstate Commerce Commission is authorized to substitute a reasonable rate for a rate which, upon complaint and formal hearing, is found and declared to be unreasonable.”

If this means anything at all it means, and it necessarily must mean, that you would expect a change of rate from Cincinnati to Chattanooga or Atlanta to be accompanied by a corresponding change of rates from Richmond and the northeastern Atlantic seaboard cities, unless there was a positive prohibition by the fixing of a minimum rate for those cities. In other words, you conclusively concede by the statement of your case in the inquiry you propound, that rates are relative and interdependent, and that there is no such thing possible or contemplated as dealing with one without dealing with many, unless some arbitrary power is provided to fix minimum as well as maximum rates. It is because the exercise of this power can not be limited to a single rate, but must embrace in every case hundreds and possibly thousands of other rates, and ultimately practically all rates throughout the whole country, that I do not think it wise to confer the power on the Interstate Commerce Commission or on any other political agency appointed by President Roosevelt or any other President, unless it can be shown that there is no other way to remedy the evils that are complained of, and I do not think any such thing can be shown. On the contrary, I think there is a much better way and a much more expeditious way, and I will indicate, in so far as I am at liberty to do so, what it is before I conclude this answer.

The reason I think this power should not be conferred on such a Commission is, to quote from Judge Cooley, because I think it practically “superhuman,” and because, if I may quote again from Judge Cowan, who came before the Committee in behalf of the shippers, and who is confessedly their chief and ablest representative:

"I tell you, Senators, that those who have not investigated the requirements to ascertain what is a reasonable rate, have no idea of the size of the task before you. You find out that you have to hear so much testimony. How would you start out to determine whether a rate is reasonable? What are the elements of reasonableness? \* \* \* The Supreme Court says that any calculation as to reasonableness of rates must be based on their fair value of the property. How are you to determine the value of a railroad? By what its stock and bonds sell for? If so, the very rate itself, which makes the earnings of the road, would increase the value, so that the higher the rate the higher the value, and the higher the value the greater is the basis of earnings. How are you to undertake to determine what sort of a return a railroad is entitled to? Is it the rate of interest provided by the laws of the state? Is that a fair return to be expected by a reasonable man for his large investment in a railroad? What is the percentage? The Supreme Court says that a railroad is not entitled to earn merely for the purpose of paying dividends, operating expenses, interest, and fixed charges, without regard to the rights of the public. It says all things which a reasonable man would take into consideration, having in view the interests of the carrier, and interests of the public, and the interests of the shippers are to be considered." And so on.

The Supreme Court of the United States has also said on this subject practically what Judge Cowan has said. In fact according to all authorities, Judge Cowan did not exaggerate the difficulty of rate-making. The difficulty of exercising this power is so universally recognized that no one any longer defends the proposition of conferring it on the Interstate Commerce Commission or any similar agency, except only upon the theory that one rate at a time can be changed. If that idea is erroneous, then the proposition is untenable, and that seems very clear to my mind.

As to the Esch-Townsend Bill, which your Association still seems to favor, allow me to call your attention to the fact that immediately following your letter, in the same column of the Cincinnati *Enquirer*, is published a letter to you from Mr. Townsend, in which he says: 'I feel confident that the principle

of the Townsend Bill of last session will be enacted into law at the coming session." The "*principle*" will be enacted into law. In other words, Mr. Townsend himself, recognizes that his bill has no chance of becoming a law, not even passing the House in the form in which it was passed at the last session.

The chosen representative of the shippers, Mr. E. P. Bacon, stated before the Senate Committee, that he thought there should be eleven different amendments before it should be enacted into law.

Governor Cummins, one of the principal advocates of such legislation, also appeared as a representative of the shippers, and testified before the Senate Committee that he did not think the Esch-Townsend Bill, as it passed the House, should become a law, and when asked as to how he thought it should be amended answered: "I would abandon it and draw another."

Judge Cowan testified:

"The people will not stand for any such make-shift. I hope no bill will pass if this is the best they can do. \* \* \* I think that bill would be practically worse than no law at all."

I think it is now pretty generally recognized and conceded that if the Esch-Townsend Bill had become a law, as it passed the House, it would have been a worse calamity to this country than the Wilson-Gorman Bill proved to be. As to the "*principle*" of the Townsend Bill, that Mr. Townsend expects to see enacted into law, there may be difference of opinion. I think Mr. Townsend a very earnest and very able man, who is striving in a very zealous way to accomplish a most desirable result. I think a great majority of both Houses are in sympathy with him as to the general proposition, just as they are in sympathy with the President as to the general result he is aiming at. Differences relate to details, and most of them have reference to the rate-making power, whether it shall be conferred on the Interstate Commerce Commission or not. I do not know what



the result will be, and perhaps Mr. Townsend does not know, although he seems to think he does. I do know what my own views are, and that I will oppose any such proposition, not because I have any personal interest or relation to any railroad, whatever, that influences me to that course, but because I think the public good so requires.

Your letter next quotes as follows from my recent interview :

“I think it would be manifest to any one who thinks for a moment, that Mr. Hooker made a mistake in not locating his dyehouse or bleacheries at one end or the other of the road over which he is to ship.”

The deductions you draw from this, allow me to say, are wholly unwarranted. The context shows that I was speaking of his right to the benefits of a through rate from the cotton mills of the South to Chicago, taking his own case as he himself had stated it, only for illustration, and no one could read the context without understanding that I meant he was unfortunate in not being entitled to a through rate. I was not without Mr. Hooker's authority for that statement, for he testified in his case that because he could not get the benefit of the through rate, being located at Cincinnati, midway between the cotton mills and Chicago, he was discriminated against on the local rate from the South to Cincinnati to the extent of 14 cents per hundred, and that he organized the Quick Transfer Company to overcome that difficulty, and that he succeeded by that means in overcoming it until the railroads, in accordance with the law, compelled him to discontinue the practice to which he had resorted. His complaint was, to use his own language, that he wanted the rates so changed as to allow him to secure that benefit without resorting to a practice that he did not regard as “open and above board.” It was certainly unfortunate for him to have to break a shipment, and thus pay a local instead of a lower through rate, or, to avoid doing so, be compelled to resort to a practice that he evidently felt was not right.



So I repeat, that having reference to the question at issue when I made the remark quoted, namely: whether or not Mr. Hooker was entitled to the benefit of through rates he was unfortunately situated, not for Cincinnati, but for himself.

You next refer to an interview with me at my office, December 22d, 1904, and set forth at some length how these questions were discussed, and how your hopes were disappointed with respect to the hearings before the Senate Committee on Interstate Commerce. Allow me to remind you that at the interview referred to, you informed me that Mr. Williamson would prepare a statement of all the complaints that the shippers of Cincinnati had to make against the railroads and furnish it to me, and that I promised you that I would study the same most carefully and do anything in my power to help remedy such evils as might be thus set forth. That statement was to be furnished in the then near future. Some weeks later, Mr. Hooker and a committee from your Association appeared before the Interstate Commerce Committee. I did not have the good fortune to be present at the meeting of the Committee on that day, but I read carefully all Mr. Hooker's statements, without finding any such detailed statement. Later, meeting Mr. Williamson in Washington, I reminded him that I had not yet received the statement he was to furnish me. I understood him to say it would be forthcoming in the near future, but until this time I have never received it. Notwithstanding, I have given very careful attention to all the complaints that the shippers of Cincinnati have made in so far as I have heard of them, and as to some of them I think there is a just ground of complaint; as to some I do not think there is any ground. The same is true as to complaints of shippers and communities the country over. Some of the matters they complain of appear to me, as I said in my speech at Bellefontaine, without excuse, to involve gross injustice and injurious discriminations; others of them, however, are not dis-

criminations but only apparently so. I gave some illustrations. One was as to the competition of Cincinnati in southern markets with the Atlantic seaboard cities, Richmond, Baltimore, Philadelphia, New York, Boston, etc., not to justify the rates charged, with which I have nothing to do, but only to show the effect of water transportation.

As to whether the decision of the Interstate Commerce Commission as to freight rates between Cincinnati and southern points was just, there is doubtless great difference of opinion. I have my opinion; you have yours, but it is not incumbent on me to say what they did was right or that it was wrong. It is my duty to recognize the fact that there are complaints, and that a way should be provided for their speedy hearing, and for an efficient remedy where wrong is being done.

I am aware that Cincinnati has spent thirty millions of dollars, principal and interest, in building a railroad to the South. and that we built it with the idea that we would be better able to compete for the trade of the South; but it does not follow that we should not expect to have competitors for that trade, nor that we should fail to recognize, that according to the natural laws of commerce on account of water transportation and sharp competition at competitive points, between the great lines of railways running into the South, there should be keen commercial rivalry and such a lowering of rates over the longer distances to such points as may seem to us unjust and discriminatory if prescribed by the same road or the same control. If it be true, as you assert, that the rates given over the Seaboard Air line, the Atlantic Coast line and the Southern Railway to Atlanta and Chattanooga are lower than they should be, as compared with the rates from Cincinnati to the same points, some way should be found to administer relief. I infer from the character of your last question to me, and your statement in that connection, that you will expect the Interstate Commerce Com-

mission, if the power you desire it to have be conferred upon it, to either lower the rates from Cincinnati to Chattanooga and Atlanta, or raise the rates from Boston, New York, Philadelphia, Baltimore, Richmond, and all other competing points to these southern points, or perhaps do both; that is, overcome the discrimination partly by lowering the Cincinnati rates, and partly by raising other rates. Suppose that should be done. Eliminating everything else from consideration, and assuming that this would please Cincinnati, as I would be glad to do, what do you think would be the effect on Boston, New York, Philadelphia, Baltimore, Richmond, and all other cities that would be prejudicially affected, the interests of all which, as a national legislator, I am as much bound to keep in mind as I am to keep in mind the interests of my home city? While I make this suggestion in answer to yours, that I should be the champion of your particular complaints, my further answer would be that there is a broader view of this question which concerns the whole country, that we must keep in mind, and that is to not only give Cincinnati a "square deal," but everybody else a square deal.

So far as your statements are concerned about being on the side of the people instead of on the side of the corporations, they are simply gratuitous. Since I have been in the Senate, I have never to my knowledge cast a vote in favor of any railroad measure. I was the author of the Senate Bill, which finally became a law, amending the law as to automatic couplers, which was fought vigorously by the railroads, or at least by some of them; and I was one of the sub-committee of three who drafted the Elkins Law, which has proven so beneficial to the shippers and all concerned, that there is for it to-day only universal praise.

Your talk about a contest between the President and the Senate is likewise gratuitous. I do not think the President desires

a contest with the Senate, and I know the Senate does not desire a contest with the President. At the same time I think the President will do his duty according to his best judgment without fear or favor, and I think the Senate will do the same. In the Senate there will be a full discussion, all interests will be heard, and I do not doubt there will ultimately be a right conclusion reached.

I would be glad to place before you in detail the legislation I think should be enacted, for I have drawn a bill which I intend to submit to the Interstate Commerce Committee when it meets November 15th for the further consideration of this subject, but until that time it would be improper for me to set forth in full what the measure should be, for I must confer with my colleagues and we must agree, if that be possible, on the form of bill to be reported. I have no fear, however, but that the shippers of the country will find that their interests are being carefully considered and that they will be protected and promoted to the fullest extent possible without injustice to the rights and interests of others.

Answering now your questions seriatim: In the bill I have drawn the carriers can be required to make not only reasonable through rates, but reasonable local rates. Whether the carriers can be enjoined from reducing rates below a minimum named involves a serious question of both policy and power for the courts to determine.

Upon a complaint being made it shall be the duty of the court to proceed summarily; to enable it to do so, postponing all other business to hear that complaint, and enjoin whatever may be unlawful, whether it be a rate, a rebate, or a discrimination between individuals, commodities, localities or of any other character.

While I shall endeavor to answer any questions, in so far as I may be able to do so, that your Association or anybody else

may see fit to ask, I trust I may not again be called upon to answer in this way, for I am exceedingly busy, and it takes a great deal of time to confer through the medium of the newspapers, though I will do that if you prefer.

My suggestion is that if you desire to confer with me further, I shall be glad to meet you or any committee of your body at any time or place or under any circumstances to which I can reasonably accommodate myself.

Very truly yours, etc.,

J. B. FORAKER.



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*Answer*

*of*

*Senator Foraker*

*to*

*Speech of Secretary Taft at Akron, Ohio,*

*on*

*Railroad Rate*  
*Legislation,*

*as published in the Cincinnati papers,  
October 27th, 1905.*

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## *Answer of Senator Foraker*

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*To Speech of Secretary Taft at Akron, Ohio, on Railroad Rate  
Legislation, as Published in the Cincinnati  
Papers, October 27th, 1905.*

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I have been expecting from day to day to be able to resume campaign work, and it has been my intention since Secretary Taft made his speech at Akron to say something in answer. I am, however, so peremptorily forbidden by my physician to resume speaking that I have concluded, in response to numerous requests, to make such answer through the columns of the newspapers, and have, therefore, dictated the following, which is not intended as a general discussion of the rate question, but rather as an answer to what was said by Secretary Taft upon those particular features of the question which he discussed in his Akron speech.

### QUESTION IMPORTANT.

No question has arisen in American politics in recent years of anything like such importance, except only the free silver question.

It is a question which not only concerns the railroads and all who are employed in connection with them, but millions of people who are engaged in other occupations that have more or less to do with the railroads, and which in a general way concerns the business of the whole country and all classes of people, without regard to their business pursuits.

With this question, as with all others, there can not be intelligent discussion until we know exactly what issue has been joined.

#### DEFINE THE ISSUE.

Secretary Taft's speech is a good illustration of the necessity of defining the issue before the debate commences, for it proceeds upon the theory that the abuses and wrongs which the railroads are committing can be remedied in only one way, and that all who do not favor that way are opposed to any remedy whatever.

I do not assent to that statement of the case. So far as I am aware, it is universally admitted that in the past many evil practices have obtained; that some of them still obtain; that none of them should be allowed to continue; that an efficient and expeditious remedy should be provided against all of them, in so far as legislation can provide.

#### WHAT'S THE REMEDY?

The sole difference is as to whether conferring the rate-making power on the Interstate Commerce Commission is the only or even a necessary remedy. My contention is that it is not necessary and that of all the remedies that have been suggested it is unqualifiedly the worst.

Secretary Taft contends that there are two grounds upon which his proposition is justified; one that it is necessary for the correction of the evils complained of, and the other that it is necessary to enable us to stem the tide of Populism, which he fears will, under the leadership of Mr. Bryan, sweep us on to Government ownership, which he justly regards with the most serious apprehension.

He says that if we enact this proposed legislation we will then be in a position to withstand all further tendency in that direction.

## BRYAN FAVORS COMMISSION.

If what Secretary Taft says in this respect is true, it is most remarkable that Mr. Bryan, who is the man he fears will bring about Government ownership in the contingency named, should be one of the chief advocates of the proposition to confer the rate-making power on the Interstate Commerce Commission, and that the Democratic party of Ohio in its platform adopted this year should also have declared in favor of such legislation.

It is notorious that Mr. Bryan for many years has been contending with all his well-known ability and energy for precisely what Secretary Taft advocates in his Akron speech.

## SENT LETTER TO ROOSEVELT.

So much had he this matter at heart that he could not start on his trip around the world, which he is now making, without inditing to Roosevelt a farewell letter of advice and encouragement to persevere without let or hindrance until he succeeded in establishing this proposition, no matter how many Republicans might be found in the opposition.

But if it be true that Government ownership is the ultimate goal which Mr. Bryan is striving to reach, is it not also true that he either regards this proposition as a step in that direction or as a substantial equivalent in its ultimate results for that Government ownership after which he is striving?

## OWNERSHIP LESSER EVIL.

He may well entertain this latter view, for the experience of other countries, where the two systems have been tried, shows without exception that Government ownership has proven less injurious than government rate-making, and on that account there are many who would have less serious concern if they should see the government taking possession of our railroads as owner than they would if they should see the Government con-



trolling the amount of the revenues of the roads by fixing their rates of charges.

#### NO OCCASION FOR ALARM.

Aside from all this, however, I do not think there is any occasion to be alarmed on account of any idea of which Mr. Bryan is the exponent; certainly there is not unless the recent indorsement of some of his views by distinguished Republicans has given him a credit and standing before the country which he did not have when he represented those views without such endorsement as the leader and candidate of the Democratic party.

If the Republican party should undertake to compete with him in the advocacy of any of his propositions it would be at a hopeless disadvantage and just what would come of it would be hard to predict.

#### DISMISSES SUGGESTION.

If there be any occasion for conferring the rate-making power on the Interstate Commerce Commission it is not, in my opinion, to be found in a necessity for heading off and defeating any movement of a Populistic character under the direction of Mr. Bryan or any other such political leader. That suggestion may be dismissed without any further consideration.

The other ground upon which Secretary Taft justifies the legislation he advocates to remedy and prevent the evils that the shippers of the country are subjected to by the railroads has more merit.

#### THREE CLASSES OF ABUSES.

He tells us that in past years three classes of abuses have been practiced, excessive rates, secret rebates and discriminations. Having mentioned these three classes of abuses as a justification for the proposition he advocates, he then quickly very largely disposes of all of them, for, while he contends that in

the past these abuses have been generally practiced, he says as to the present "it may readily be conceded that the great bulk of the rates are reasonable both in and out of themselves and in respect to other rates."

While in another place he says "in some instances rates are excessive." He thus reduces to the minimum the abuses of excessive and discriminating rates. At least such language does not describe anything very startling or extraordinary.

As to rebates, his statement is "That giving rebates has ceased to be so generally practiced is undoubtedly true, but whether it will return when business grows dull and competition between the railroads grows intense in case of business depression no one can tell." He thus practically disposes of his third class of abuses, or, at least, he reduces it to a minimum.

#### CONDITIONS IMPROVING.

The facts would have warranted a still greater diminution of evils, for while it is familiar to all that in the past there have been great abuses under all three of these classes, yet it is also familiar knowledge that railroad conditions have been constantly improving, especially of late years, and that whatever may have been the necessity for drastic legislation in the past, there is no such necessity at this time.

I suppose there are some excessive rates. It would be strange if there were not, but every witness, I think without exception, who has testified on this subject, whether representing the shippers or representing the carriers, has stated that rates in and of themselves are not excessive; that they are as low as they could be expected to be.

#### EXTORTION NOT CHARGED.

Mr. Hooker, one of the most intelligent and best-informed of all who appeared for the shippers, testified that in all his long

experience he had never known a case of extortion, and that the whole trouble was one of relative rate adjustment.

The same is true as to rebates, the giving of which is by far the worst practice in which the railroads have ever indulged. In February, 1903, Congress passed what is called the Elkins law.

Carriers and shippers all alike testify that since the enactment of that statute the practice of giving rebates has been practically entirely discontinued, or that if not wholly so the law is ample, if properly enforced, to effectually and absolutely prevent the continuance of the practice.

#### WOULD NOT PREVENT REBATES.

But suppose it were not. How would conferring the power to make rates on the Interstate Commerce Commission prevent the giving of rebates? They could be given upon rates fixed by the government as well as upon rates fixed by the railroads. So that whether rebates have been entirely discontinued or whether amply legislated against there is no argument whatever, so far as a desire to prevent a resumption of the giving of rebates in time of business depression is concerned, in favor of conferring the rate-making power on the Interstate Commerce Commission.

If, therefore, rates are not excessive and rebates are no longer given, or if given would be beyond the reach of the legislation proposed, two of the reasons for its enactment have wholly failed.

#### ONE REMAINING GROUND.

The only remaining ground upon which it is sought to justify this legislation is that it is necessary to prevent discriminations; and we are told that these discriminations, in so far as they are yet practiced, are between shippers and localities.

It might have been added that they take almost every kind of form and guise that it is possible for the ingenuity of man to

invent. They consist not only of discriminations between shippers and localities, but discriminations between commodities, in classification, by means of terminal charges, elevator charges, refrigerator charges and many other kinds of charges and devices too numerous to mention.

#### THE ELKINS LAW.

This has been a most serious trouble. We undertook to deal with it when we passed the Elkins law. In that statute we provided that it should be the duty of the Interstate Commerce Commission whenever it should have reasonable cause to believe that any unjust discrimination forbidden by law was being practiced to cause a proceeding to be instituted in the Circuit Court of the United States, having jurisdiction, and that it should be the duty of that court forthwith to proceed to hear and determine whether or not there was just ground for the complaint, and if so, enjoin it.

#### STATUTE UPHELD.

The Supreme Court of the United States has upheld the validity of this statute. It is now in force. There is no reason whatever why, if any locality thinks it is discriminated against, or any shipper thinks he is discriminated against, application should not be forthwith made for relief and relief secured if the charge can be sustained, for the court is by the statute expressly invested with full jurisdiction to entertain the complaint and administer a complete remedy.

This statute has been in force ever since February 19, 1903. It was passed because these complaints of discrimination between shippers and localities were constantly being made. The law has been much discussed in the newspapers, in the courts, by the profession, and is familiar to all shippers.

If they do not take advantage of its provisions it is their own fault.

## AMENDMENT DRAFTED.

I think as it stands it covers the whole ground, but I also think that it can be made more explicit and still more efficient, and I have drafted an amendment which I shall at the proper time submit to my colleagues on the Interstate Commerce Committee of the Senate.

If Secretary Taft or anybody else will tell me wherein this remedy is deficient or tell me in what manner a better remedy can be provided by conferring the rate-making power on the Interstate Commerce Commission, we shall then have reached the point where glittering generalities can be dismissed and intelligent discussion may commence.

## FIX MINIMUM RATE.

I can conceive of but one thing that the Interstate Commerce Commission could do, if invested with the rate-making power, to prevent discriminations between localities that can not now be done by the courts, and that is to fix a minimum rate.

The maximum rate case referred to by Secretary Taft may be used to afford an illustration. In that case the Interstate Commerce Commission condemned the rates from Cincinnati and Chicago to certain Southern points and substituted lower rates therefor.

They did this because they found that the rates from Chicago and Cincinnati were relatively higher than the rates from New York and other Atlantic seaboard cities to these same Southern points, which latter rates they took as a standard of measurement. The rates did not go into effect because the Supreme Court held that the order was invalid for want of power to make it.

## QUESTION OF ADJUSTMENT.

If they had gone into effect, the question being one purely of relative adjustment, there was nothing except loss of revenue



to prevent the railroads from New York and the other cities affected to the Southern points named reducing their rates to correspond with the reductions ordered from Chicago and Cincinnati to these points, thus leaving the relation of these cities to each other precisely where it was at the beginning, and for this there could be no remedy except another order by the commission, if it had the power, to fix a minimum rate below which the competing railroads from New York and the other cities should not be allowed to reduce their rates.

But does Secretary Taft or any other advocate of this proposition desire to see the commission, or any other body, fix minimum rates, even if it should be conceded that such power could be constitutionally conferred and exercised? How long would a policy be sustained which involved a prohibition against a reduction of rates between any communities or sections of the country?

#### ELKINS LAW PROVIDES REMEDY.

But if it is not intended to empower the commission to fix minimum rates, it follows that so far as discriminations are concerned, no matter what their character may be, the Elkins law already provides a speedy and efficacious remedy; far more speedy and efficacious than that which is proposed because it involves but one hearing, and that before the court, where full and final action may be taken.

#### EXCESSIVE RATES FEW.

So far as excessive rates are concerned they are so few and far between that no one is demanding any such legislation on that account, but, nevertheless, any court of equity now has not only jurisdiction to enjoin an unreasonable rate that is in force and being collected, but also any portion of any such rate now in force that may be in excess of that which is a just and reasonable; or, in other words, the lawful rate, as prescribed by statutes.

Such being the conditions that now exist, what is the character of the legislation that is proposed?

Most of its advocates seek to minimize it by contending that it involves nothing more than the substitution of one rate for another rate that has been condemned. Secretary Taft concedes that the changing of one rate may necessitate the changing of many other rates.

#### MAXIMUM RATE CASE.

Referring again, for illustration, to the maximum rate case that he cited it was found necessary there in order to make the changes asked for to change over two thousand rates, involving a reduction of revenue to the railroads of about \$3,000,000 annually.

It is safe to say no change of rates complained of as discriminatory against a locality could be made that would not involve substantially as great a number of changes as were made in the maximum rate case.

In most of them the changes necessitated would be far larger in number. There would be no limitation as to the extent to which an order of the commission might go in such a case, except only the judgment of the commission itself. This is not mere assertion. The Supreme Court has expressly so held.

#### COURT'S RULING.

In that same maximum rate case that court stated that if the commission had the power which it attempted to exercise in that case, which is precisely the power which it is now proposed to confer upon it, no greater nor less "it would be within the discretion of the commission of its own motion to suggest that the interstate rates on all the roads in the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such a hearing make one general order reaching to every road and covering every rate."

## TAFT'S VIEW.

Secretary Taft thinks it absurd and foolish to imagine that the commission, if invested with this power, would ever undertake to exercise it to such extent. Perhaps it is, but the Supreme Court of the United States did not think so, and there are many who do not think they suggested an "absurdity" when they spoke of the wide scope the exercise of the power might take.

Does not the proposition for this legislation rest upon the belief that there are hundreds of cities and communities in the country that think they are discriminated against, which it is reasonable to suppose would apply for relief when a remedy is provided.

## WOULD RAISE CONTROVERSY.

And does it not follow that if any considerable number of cities should make such application there would at once be a controversy over rates that would reach into every section and into every state and affect every community and every business interest in the whole land.

In such event it would be the duty of the commission, and it would be compelled to exercise the broad and unlimited power which the Supreme Court has suggested it could and might exercise. I think it safe to assume that in such contingency there would be numberless complaints to be heard, and that, judging by past experience, every time the commission would make an order granting relief the result would be a never ending new crop of complaints.

## IF ORDER HAD STOOD.

Recurring to the maximum rate case, if the commission's order had stood the changes it made in rates would have precipitated complaints from New York and all the other cities prejudicially affected, and their complaints would have affected other cities and sections indefinitely.

This may not be a good reason for not enacting the legislation proposed, but it is a good reason for going at once to a forum from which there is no escape and to which, by all the propositions that have been advanced, every such controversy must be finally submitted. In that event, if the decision be against the railroad, there is no injustice to it in putting it at once into effect.

#### RIGHTS IN FEDERAL COURTS.

The rights of all parties involved will be in the hands of the Federal courts, of which Secretary Taft properly speaks in terms of highest praise, with power and capacity to comprehend and protect the rights of all.

Answering Secretary Taft's suggestion that the burden of all litigation should be placed on the railroads, it is no hardship on the shipper, but a direct benefit to him to require his proceeding to be under this statute as it is and will be when amended, for because of the fact that there can not be one change made without necessitating hundreds, and perhaps thousands of others, every such proceeding would be not for the benefit of the complaining shipper alone, but for a whole community of shippers, hundreds and probably thousands.

The proceeding would, therefore, in fact be on behalf of the public, and should be in the name of the government and at the expense of the government or the railroads, as the court might deem just and equitable, and in no case at the expense of the shipper.

These proceedings should be commenced by complaint filed with the Interstate Commerce Commission, which should conduct only preliminary investigations to the extent of determining whether or not there is probable ground, and when that point is reached the whole matter should be turned over to the Department of Justice to be prosecuted, not before a special court, which it would be, I think, unnecessary to create, but before the

Circuit Court of the United States having jurisdiction in the particular case.

#### APPOINT NEW JUDGES.

In this way these cases would be distributed throughout the whole country and be confined to a judicial system with which we are familiar and the working strength of which we can increase, as found necessary, by the appointment of new judges.

Thus we would leave the making of rates in the hands of skilled men, but subject to immediate review upon complaint made by courts skilled in the weighing of testimony, the analysis of facts and the application of the law, and the same courts to which, by the proposed legislation or any other legislation that may be suggested, the controversy will have to be submitted anyhow at some stage of the proceeding, for we could not, if we so desired, take away from the parties to the controversy the right to submit their contentions to the courts for final adjudication.

#### DIFFICULTIES OF RATE-MAKING.

It seems idle, in view of what all interested in the subject must know, to speak further of the difficulties of rate-making and the determination of the justice of rates when they have been made and are called in question.

Nevertheless, I venture to suggest that it should be kept in mind that these roads extend into every section of the country. They cross and recross each other and converge at all important points.

At every point where they cross or come in contact they are in sharp competition with each other.

#### ALL HAVE COMPETITION.

They are as a whole, in competition with water transportation along thousands of miles of coast line, and other thousands



of miles represented by the lakes, rivers and canals. They not only transport commodities from one section of our country to the other for domestic consumption and the general purposes of trade and commerce but they also transport our products to the seaports for export to foreign countries, and from ports of entry they carry our imports to interior points.

With respect to all this foreign commerce, which amounts to millions of tons of all kinds of freight, they are not only in competition with influences that operate on the land, but with all the influences connected with ocean transportation and the ever varying conditions of foreign markets by which rates in this country are affected.

#### EXPERT RATE-MAKERS.

To adjust rates under all these conflicting, complicated and difficult circumstances, is a work that can be done with only approximate satisfaction, even by the most skilled experts, who have devoted to it years of study and experience.

There are thousands of these skilled expert rate-makers. They are scattered throughout the country with their respective roads. They are familiar, each in his own sphere, with the peculiar conditions affecting the work he is employed to perform.

It should be their constant aim and purpose so to adjust rates as not only to bring a fair revenue to the railroads, but also at the same time to develop the business of their respective territories.

#### MUST MAKE RATES LOW.

In this behalf they must of necessity make rates as low as their operating expenses, fixed charges and dividends on stock will permit. The statistics show how well they have done their work, for they show that the gross revenues of the roads are now so closely calculated to meet the demands mentioned that a reduction of one mill on the cost of transporting a ton of

freight per mile would so reduce the aggregate of the revenues as to make it impossible for the roads to pay one dollar of dividends on all the stock that is now outstanding, and that a further reduction of one and one-half mill per ton per mile would make it impossible to pay one dollar of interest on the bonded obligations the roads have issued. These facts show with what nicety present adjustments have been made, and show what havoc and disaster might be wrought if the fixing of rates should be taken from the men who own the roads and the skilled experts who now do that work for them and be intrusted to a political body restrained by statutory limitations.

#### WHY TAKE AWAY POWER.

If rates are so adjusted as to yield no more than I have indicated, and if a reduction so slight as I have mentioned would work such disaster, where is the necessity for taking away from the men who now make rates the power they are so satisfactorily exercising?

Not on account of Mr. Bryan with his Populistic theories, for he is no longer the menace to the country that he formerly was unless by endorsing his views we make him such; not on account of excessive rates, because there are comparatively but few at most, and none for which there is not already a remedy; not on account of rebates, for they are no longer practiced, and the law is ample for the punishment of all violations of that character that may occur; not on account of discriminations, for they too, are prohibited, and the law will be so amended as to provide for a speedy and efficient enforcement of the prohibition, if it does not already do so.

#### NOT DISCRIMINATIONS.

On another occasion I have said that many alleged discriminations are only apparently such. What I had in mind then and want to express now is the fact that apparent inequality

of rates between localities will be found in most instances to be due to natural conditions, the effect of water transportation, competing points and the necessity in many cases of particular roads giving low long-distance rates to secure wider markets for those depending upon them.

One of the greatest benefits our railroads have secured to our country has been the symmetrical development of all the different sections.

They have done this as a result of competition among themselves, to develop their own territory and to invade with its products the territories belonging to rival roads, and in their struggle to give to their patrons, producers along their respective lines, the widest possible markets in which to distribute and sell their products, disregarding distance in so far as the Interstate Commerce Law will allow.

#### COMPLAINTS ON MILEAGE BASIS.

Thousands of complaints are based upon the idea that rates should be made on a mileage basis, and that distance should control in determining the natural advantages of a particular community.

Mr. W. H. Alms, one of the leading merchants and citizens of Cincinnati, in a letter recently published in the Cincinnati papers, made this contention in a very forcible way for Cincinnati. It has been extremely fortunate for the country that railroad rates have not been made on any such basis.

The producers of butter and eggs in Central New York and Vermont once complained that they were discriminated against because the producers of butter and eggs of Iowa and that Western country 1,500 and 2,000 miles away from New York, were given practically the same rate for their products to Boston and New York.

## COMPLAINT NOT JUST.

But was this a just complaint? The Iowa people who get the benefit of this rate are not injured. They are greatly benefited. They get a market.

The people in Boston and New York are not injured, but greatly benefited, because they have two sources from which to draw these necessary supplies, and, therefore, the benefit of competition.

The people of Vermont and New York are not injured because they still have left their right to compete in these great markets on equal terms with their more distant competitors. They have, therefore, an equal chance to command legitimate returns on their products. If it were otherwise, and the producers of butter and eggs in Iowa had to pay mileage rates measured by distances, New York and New England would have a great advantage. They would have the greatest market of the country all to themselves and could get better prices, and probably the demand on them would be so great that they could advance the price beyond what the poorer classes of people could afford to pay; but that would be a great misfortune that would affect millions of consumers and producers.

## CITES OTHER INSTANCES.

As it is with the butter and eggs market in New York and Boston, so it is with the market for lumber on the prairies of the West, to which for every house that is built the lumber must be brought from other sections.

Minnesota and Michigan complain that although they are nearer, distance is ignored to such an extent that substantially equal rates are given on lumber from Seattle, from California, from Texas and Arkansas, Mississippi and Georgia; from points varying in distance from 300 to 2,300 miles.

This is not discrimination against Minnesota and Michigan, or any of the nearer points, but it is the legitimate result of

legitimate competition between the various roads that are undertaking to provide markets for their respective patrons and producers, and the result is one of greatest benefit to the consumers and the whole country.

#### CINCINNATI AND ST. LOUIS.

Cincinnati and St. Louis have become great shoe manufacturing centers. If distance tariff prevailed they would have their own cities and their contiguous territory to themselves, but the shoes of Massachusetts are sold in Cincinnati and St. Louis in competition with the products of these cities because the railroads, disregarding distance with a view to taking care of their own producers and gaining markets for them far from home, have given them rates that enable them to enter those cities in successful competition.

This is not an injury to Massachusetts and the capital and men engaged in the shoemaking plants of that state.

#### ALL ARE BENEFITED.

They are greatly benefited by getting enlarged markets; neither is it an injury to the citizens of Cincinnati and St. Louis, but on the contrary a great benefit, because it brings together in competition the shoes manufactured in these widely separated centers, and thus tends to restrict the price at which they buy for consumption to what is a fair profit; and on the other hand, it does not injure unjustly the men who produce shoes in these markets, because the Massachusetts shoemaker must get the cost of his product, freight and a reasonable profit, or else he will not compete, and the Cincinnati and St. Louis shoemakers, all other things being equal, should not ask more, and do not, than their competitors thus receive.

#### NO DISTANCE TARIFF.

These illustrations might be multiplied almost without number, but it is sufficient to say that the same is true with respect



to Cincinnati as to cotton, iron, coal and every other product that comes into our community and as to every product we manufacture and send out of our community to be sold in the markets of the country.

We want to be reached by every section that can possibly reach us, and we want in return to reach every other section, and in this behalf we want the lowest and most favorable rates that natural conditions and the laws of trade and commerce will allow, but we do not want, under any circumstances, a mileage or distance tariff.

That would prejudicially affect us and the whole country, but that is precisely what the Interstate Commerce Commission has been driven to in every case where it has sought to change rates and what any other Governmental body appointed to make rates would be driven to in the exercise of that power, for every community would be at war with every other and that would be the only basis on which there could be any intelligent action. I do not know how we could insure greater confusion with more certainty of restricting railroad development and general business prosperity.

#### INJUSTICE TO CARRIERS.

But there is another feature of this great question that involves the grossest injustice to the carriers, and that is the absolute loss of revenue to them if rates are to be fixed by the Interstate Commerce Commission and they are to be put into operation and continue until the end of the litigation that it is provided shall follow in the courts when such orders of reduction are contested by the railroads.

In the maximum rate case the difference in revenue to the roads was estimated upon the freight they were then carrying in a time of great business depression to amount to as much as \$3,000,000 annually. In recognition of this fact Secretary Taft says the proposed law might be so amended as to authorize the

court, on application, to make some provision by proper order for the protection of the roads against such loss.

#### WOULD ENTAIL A BURDEN.

Inasmuch as the Government is to be and should be, the prosecuting complainant in all these cases, I suppose it would be competent to make the Government responsible, but that would entail upon the public treasury a burden that it should not be required to bear.

The Government will be doing enough when it takes upon itself the burden of prosecuting all these complaints free of cost to the shipper.

The suggestion only emphasizes the fact that the best way of all the ways proposed is to require these cases to be proceeded with without delay and in these cases as in all others, let litigants await the judgment of the court.

#### DOES NOT INVOLVE DELAY.

This does not involve any delay whatever, but a saving of time, since the court, being required to proceed summarily, would try the case and give relief in the same time that the commission could reach the point of making its order, which would be only the beginning of the litigation.

The law already provides that no shipper, by reason of any such prosecution of his complaint by the Government, shall be deprived of his right to sue in his own name and in his own way to recover whatever injuries or damages he may sustain on account of being subjected to an unreasonable or unlawful rate or discrimination. Thus he will be protected in all his rights.

#### FUNDAMENTAL PRINCIPLE UNJUST.

Secretary Taft also suggests that the proposed law may be further amended so as to provide that the rate fixed by the Interstate Commerce Commission shall not go into effect until

the railroad has had time to appeal to the court and have the court determine whether or not it should go into effect at once or at a later period.

Such an amendment would relieve the law, as heretofore proposed, of much of the objection that has been urged against it, but the suggested amendment only emphasizes the fact that the fundamental principle underlying the whole proposition is unjust, unnecessary and in conflict with the spirit of our institutions, according to which every man is entitled to his day in court before final judgment is rendered against him, especially when it involves the revenue of his own property.

#### COMMISSION IS CRITICISED.

Secretary Taft speaks in high praise of the work that has been done by the Interstate Commerce Commission, and complains that it has been shown lack of respect by certain railroad officials.

I agree with him that the commission has rendered valuable service, and it may be that it has been subjected to some unjust criticisms, for who has not?

The valuable service, however, that the commission has rendered is universally recognized, and in so far as any of its work has been criticised, whether justly or unjustly, it has been because of its unsatisfactory character aside from its want of power whenever it has undertaken to change rates.

When it has acted as an agency of conciliation or has sat in judgment upon questions of regulation other than rate-making it has almost universally made a good record, but every time it has undertaken to deal with rates, without exception the result has been unsatisfactory and in almost every instance, if not in every one, its work has been overruled by the courts.

In this experience we have clearly established the limitations of the extent to which such an agency can be usefully employed, and these limitations exclude the rate-making power. This

is true because really and in fact there is no such thing as making rates in the sense in which that term is ordinarily understood.

Rate-makers of the railroads do not arbitrarily fix the rates, except in rare instances.

What they do is to ascertain and declare the rate which has been fixed by the natural conditions and by the operation of the laws and forces of commerce and trade.

Ninety-five per cent of the millions of rates that have been made have been fixed by influences that are as far beyond the power of the rate-maker to control as are the hidden influences and forces that control the waves and tides of the ocean. Hence it is that rates are constantly changing.

#### THE MANY MARKET INFLUENCES.

Official reports of the Interstate Commerce Commission show that the average number of schedules of rates filed with it daily is something like 300, and that each of these schedules contains anywhere from 100 to more than 1,000 rates.

The opening of new mines, the building of new factories, the starting of new furnaces and mills and shops, the building of new roads, the location and development of new settlements and towns and cities, the constant fluctuations of the market at home and abroad, peace and war, droughts and floods, long and short crops, famine, pestilence and the plague, all, whether occurring in Europe, Asia, South or North America, affect supplies, influence markets and control the prices of transportation.

#### NEW RATES RESPOND WEEKLY.

Responses to these influences must be made with new rates from week to week, from day to day, and hour to hour. These demands are too sudden, urgent and important to wait on the action of a Governmental body.

With unrestricted but regulated liberty of commerce and with capable men studying and dealing with these demands, they can be promptly met, not always exactly as they should be, but approximately so, and business can be thus accommodated—not alone the business of the railroads, but the business of the shippers and of the whole country.

But a commission or an administrative body, or any other kind of Governmental agency, undertaking to make rates in any such large measure as such a law as the Esch-Townsend bill suggests, would be utterly unable to meet such requirements.

#### INADEQUATE TO COMPREHEND.

A hundred such bodies, as General Keifer well said, would be inadequate to study and comprehend and respond to such complicated and overwhelming demands and requirements. As Judge Cooley said, such a work would be “superhuman.”

As a result they would, if charged with that duty, of necessity resort to some simple mileage or yardstick plan, which would stop general widespread distribution and confine each community to its own narrow zone.

It required fifty-two columns of small type, closely printed, to set forth the opinion of the Interstate Commerce Commission in the maximum rate case, and these were all devoted to premises, statements, analyses of figures and tables and distances, with the result that they finally reached a conclusion governed, as one of its chief considerations, by a mileage basis, but which when they came to apply it, upset all the long-established relations that had existed between the various cities their decision affected.

I do not mention this to find fault with the commission. Entertaining the view they did as to the rates under consideration, they were compelled to find some sort of basis on which to make a new relative adjustment, and they perhaps



took the only basis upon which could be rested any intelligent defense of their action.

The vice of the whole matter is in the fact already stated that they found themselves compelled, if they made changes at all, to disregard the legitimate influences of natural conditions and the forces of trade and commerce, and make rates without regard to them.

#### ATTENDANT CONFUSION.

If their action had been upheld by the courts the far-reaching effects of it could hardly be exaggerated.

It would have amounted to a general rearrangement and readjustment of rates throughout practically one-third of the whole country, with attendant confusion and interruption and derangement of business; and with as much and more dissatisfaction remaining after their work was done as they found when their work commenced.

As it was with the Commission in that case and in other important cases where the same general question was presented, so, too, will it be with any other Commission or body to which such a power may be confided.

If there were any great necessity, or if there were no other way in which to remedy acknowledged evils, the proposition would still be of such serious character, that we might well hesitate to adopt it, but with no greater evils than have been pointed out and with other ways more acceptable and more efficient already provided by the law and to be provided in ways that will avoid such undesirable consequences, there is certainly no justification for a resort to such an uncertain and dangerous experiment.





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SENATOR FORAKER'S  
RAILROAD RATE BILL

AND

EXPLANATORY STATEMENTS

PRESENTED TO THE

SENATE INTERSTATE  
COMMERCE COMMITTEE

NOVEMBER 24, 1905





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The following is a copy of the bill presented by Senator Foraker to the Committee on Interstate Commerce, United States Senate, November 24, 1905, as to railway rate legislation, with an explanatory statement of the same :

### A BILL

To further regulate commerce with foreign nations and among the States, and to amend the laws on that subject now in force.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in addition to the powers heretofore conferred on the Interstate Commerce Commission it is hereby authorized to appoint from time to time such expert bookkeepers or accountants or other suitable persons as may be necessary, for the purpose of thoroughly examining, under its direction, the books, records, and transactions of common carriers engaged in interstate commerce with respect to all matters pertaining to the transportation of such commerce.*

*The persons so appointed shall be, and they hereby are, vested with full power to examine under oath any or all of the officers and agents of such carriers touching such interstate-commerce transportation, and they shall make a full detailed report of all such examinations to the said Interstate Commerce Commission in such form and at such times as it may prescribe; and all carriers so engaged in interstate commerce are hereby required to permit such examinations of their books, records, officers, and employees, and do all other things necessary and proper to facilitate such examinations.*

*Sec. 2. That section three of the Act approved February nineteenth, nineteen hundred and three, entitled "An Act to further regulate commerce with foreign nations and*

among the States," be, and the same is hereby, amended so as to read as follows:

"SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is, *either singly or in cooperation with one or more other carriers, publishing and charging unjust or unreasonable rates therefor, or is committing any discriminations forbidden by law, whether as between shippers, places, commodities, or otherwise, and whether effected by means of rates, rebates, classifications, preferentials, private cars, refrigerator cars, switching or terminal charges, elevator charges, failure to supply shippers equally with cars, or in any other manner whatsoever, it shall be its duty, if such carrier or carriers will not, after due notice, desist from such violation of the law, to file with the Attorney-General a brief statement of its grounds for such belief and the evidence in support thereof, and thereupon, under his direction, and in the name of the United States, a petition shall be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in any one of such judicial districts or States, whereupon it shall be the duty of the court summarily to inquire into the facts and circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary; and upon being satisfied of the truth of the allegations of said petition the court shall enjoin according to the ground of complaint the publishing and charging of all of any such rate or rates so complained of, in excess of what the court shall find to be reasonable and just; such injunction to continue in force during such period as the same or substantially the same conditions may continue, as are established by the evidence in such case; or shall enforce an observance of the published*

tariffs if they are found to be just and reasonable; or direct and require a discontinuance of such *discriminations*, by *such* proper orders, writs, and process, as will, as nearly as *maybe*, secure equality of right and treatment to all shippers, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier or carriers complained of; and all proceedings hereunder shall be subject to the right of appeal to the Supreme Court as now provided by the Act of February eleventh, nineteen hundred and three, to expedite the hearings of suits in equity; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon, unless the Circuit or Supreme Court, on application therefor made for good cause, so order. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall be prosecuted at the cost of the United States or the railroad company or companies as the court may adjudge equitable and just, and such proceedings shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled 'An act to regulate commerce and the Acts amendatory thereof.' And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and any shipper or shippers who may be interested, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper or shippers, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction,

matter, or thing concerning which he may testify or produce evidence *or information*, documentary or otherwise in such proceeding: *Provided*, That the provisions of an Act entitled 'An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled An Act to protect trade and commerce against unlawful restraints and monopolies, An Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three,' shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission."

*Sec. 3. That no carrier engaged in interstate commerce shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person a greater or less compensation for interstate transportation of passengers than it charges, demands, collects, or receives from any other person for a like service. And any carrier violating this provision shall be deemed guilty of unjust discrimination and shall for each offense pay to the United States a penalty of not less than one hundred nor more than two thousand dollars: Provided, That nothing herein shall prevent the free carriage of destitute or indigent persons, or the issuance of mileage or excursion passenger tickets, or prevent such carriers from giving free or reduced transportation to ministers of religion, or to the inmates of hospitals, eleemosynary and charitable institutions, or to prevent any such carrier from giving free transportation over its own lines to any of its officers, agents, employees, attorneys, stockholders, or directors, or to the families of its employees.*

*Sec. 4. That nothing in the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, or in the Act to protect trade and commerce against unlawful restraints and monopolies, approved July second, eighteen hundred and ninety, or in any Act amendatory of either of said Acts, shall hereafter apply to the establishment of rates or the changing or publication of the same*



*with respect to foreign commerce if carried in ships of American registry; or shall prohibit any necessary or reasonable act, association, or agreement with respect to interstate transportation that is not in unreasonable restraint of trade or commerce with foreign nations or among the several States; or shall hereafter authorize forfeiture of property as punishment for any violation of such Acts.*

*Sec. 5. That it shall be unlawful to transport foreign commerce that has been imported, or that is designed for export, at a less rate than is charged between the same points for the transportation of domestic interstate commerce of like character unless carried in ships of American registry.*

*Sec. 6. That the Interstate Commerce Commission is hereby authorized and empowered to appoint such inspectors and adopt such other means as may be necessary to ascertain what foreign commerce is carried in ships of American registry and on that account entitled to the benefits of the provisions applicable thereto of sections four and five of this Act.*

*Sec. 7. That all laws and parts of laws inconsistent with the provisions of this Act are hereby repealed, and this Act shall take effect from and after its passage.*

### **Explanatory Statement of Senator Foraker.**

The results desired by the President should be accomplished, but if they can be secured without conferring the rate-making power on the Interstate Commerce Commission or any other governmental agency, a number of very troublesome legal questions will be avoided, such as the Constitutional prohibition against giving preference to the ports of one State over those of another, the right to delegate legislative power, and all questions as to the power of the court to review the legislative act of making rates except in cases that are confiscatory, etc.

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NOTE : Portions in italics show proposed amendments to Elkins law.



Notwithstanding the opinion of the Attorney-General, there is much difference of opinion among good lawyers as to how the court would decide these questions if we would give rise to them by going into the business of rate making. All our legislation, if it involved these questions, might be overthrown in the courts. Without stopping to discuss them, it is enough to say that they are sufficiently serious to make it desirable to avoid them if we can accomplish the ends aimed at without encountering them.

The bill I have presented to the committee avoids them and at the same time gives, I think, a more prompt, more economical and more efficient remedy than can be secured through an exercise by the government of the rate-making power.

To make this plain, it should be recalled that there are three classes of abuses complained of.

They are excessive rates, rebates, and discriminations.

As the President, in effect, well said to the trainmen who waited on him a few days ago, there is but little complaint that rates, in and of themselves, are too high, and he did not anticipate that rates would be reduced, if the rate-making power should be conferred on the Interstate Commerce Commission or some other tribunal, to such an extent as to interfere with the wages of the employees.

There are, however, no doubt, some cases of excessive rates. At least, it would be strange if there were not, and a remedy against them should be provided.

As to rebates, they are largely, if not altogether, discontinued since the Elkins Law of 1903; and, if not, that law is regarded by all who have spoken on the subject as sufficient, if properly enforced, to break up the practice. At any rate, there is no real need for further legislation on that subject.

The great evil to be reached and dealt with is discrimination.

This takes the form of discrimination between both localities and individuals. It is practiced under numerous guises and devices, such as terminal charges, elevator charges, refrigerator charges, private car line charges, classification, false weights, refusal to supply cars equally to shippers, and in numerous other ways.

The Elkins Law of 1903 was directly aimed at this class of abuses. It was made broad and, as we thought at the time, efficacious. The Supreme Court has upheld it, and wherever it has been invoked it has been found a quick and complete remedy. It did not provide a remedy, however, against excessive rates and was not as specific and comprehensive in some respects as experience has shown it should be.

The basis of the most important feature of the bill I have presented is the third section of the Elkins Act. I have sought to amend it so as to make it applicable not only to every form of discrimination that can arise, but also to excessive rates as well as rebates, and I have sought to make the law available to the humblest shipper in the land and to make it immediately responsive whenever he may see fit to invoke it.

It will provide, if amended as I propose, that whenever a shipper may think he is charged an excessive rate, or whenever rebates are complained of, or when any form of discrimination is charged, and a complaint—no matter how informal—filed with the Interstate Commerce Commission, it shall be the duty of that Commission to immediately investigate such complaint and, if it reach the conclusion that there is reasonable ground for it, and the railroad will not, upon notice from the Commission, desist from charging the

excessive rate or giving the rebates or practicing the discrimination, the Commission shall thereupon, instead of proceeding to have a formal trial, as heretofore—continuing through months and even years—forthwith certify the complaint and the grounds of it, with a brief statement of the testimony to support the complaint, to the Attorney-General, who shall thereupon refer the same to the proper United States District Attorney, who shall at once file a petition in the Circuit Court of the United States having jurisdiction, which court shall forthwith make parties of all interested and proceed at once to hear the complaint, and upon such hearing enjoin—if it be a case of excessive charge—all that part of such rate that may be in excess of the lawful rate, which is the just and reasonable rate prescribed by statute, or enjoin the giving of the rebate or the further practice of the discrimination complained of, accordingly as it may be the one or the other.

The railroad shall have the right to appeal from this decision to the Supreme Court of the United States, but such appeal shall not suspend or supercede the judgment of the court unless the Circuit Court trying the case, or the Supreme Court of the United States, shall, for good cause, so order.

The whole proceeding shall be in the name of the United States and at the expense of the United States, and without any expense whatever to the shipper.

The reason for this is in the fact that these complaints involve more than the rights of the individual shipper or the particular community complaining. No one rate can be singled out and dealt with by itself separately. Any change of an important rate may affect numerous localities, thousands of shippers and thousands of rates. The proceedings should, therefore, be on behalf of the public and at the

expense of the public, except only that where the railroad is found to have been in fault there shall be judgment against it for costs as well as for relief.

In other words, the proposition of the bill is that, upon complaint and the showing of probable cause, the case shall be heard on its merits, in the first instance, in the court, where full relief can be granted.

This is not a delay to the shipper, because it will take no longer, stating it conservatively, to try the case before the court in the first instance than it would to try it before the Interstate Commerce Commission; and the probabilities are that any judge of the Circuit Court of the United States, accustomed to hearing witnesses, applying the law and disposing of litigated questions, sitting in equity, would try the case in much less time than the Interstate Commerce Commission or any other similar body would require.

The propriety of going, in the first instance, to the court, where a remedy can be administered, is manifest when it is remembered that every such case must, if the parties to it are so disposed, go to the court anyhow before it is ended, for it is the Constitutional right of every one to have his day in court, and that right can not be taken away by Congress, even if there were a disposition to do so.

But there is no disposition to do that on the part of any one. On the contrary, every plan that has been proposed and every bill introduced has provided that, sooner or later, there shall be this judicial review.

The greatest work of the Interstate Commerce Commission has been in the exercise of its powers of conciliation. More than three-fourths of the cases brought before it have been, through its intervention, amicably and satisfactorily adjusted. It will retain this power of conciliation and must exercise it before instituting any legal proceedings.

The mere fact that the Commission is invested with power to sue in the name of the government and without expense of any kind to the shipper and to command a summary proceeding—which means that the case shall be heard and decided not in one or two or three or four years after it has been instituted, but in a comparatively brief time—will induce railroads to strain a point to come to an agreement with shippers, that they may avoid such character of litigation. They will realize that where the United States Government, in the interest of whole communities, proceeds against them, it will be useless to go to the courts unless they have just grounds of defense.

There are other features of the bill.

The first section, for instance, provides for the appointment of expert examiners who, under the direction of the Interstate Commerce Commission, can make an examination at any time of all books, documents, and papers of any railroad that relate to interstate transportation of commerce. This will enable the Commission to ascertain facts and secure evidence.

Another provision of the bill is designed to prohibit and break up the giving of passes. This provision needs no comment.

Another is simply declaratory of the common law rule as to reasonable and unreasonable agreements with respect to restraints of trade; a provision that is probably unnecessary, in view of the latest utterances of the Supreme Court of the United States on that subject, but which will remove all doubt as to what is legal in that respect and be found helpful when it comes to the prevention of discriminations between localities made by independent roads.

Another provision prohibits the carrying of freight that is to be exported or freight that has been imported on



through rates, less as to the rail portion of the charge than is exacted for the carrying of similar domestic commerce between the same points, unless the carriage be in ships of American registry.

The amount of freight carried on these lower through rates is constantly increasing, and there is a constantly growing complaint from manufacturers on this account.

Taking, for illustration, a complaint sent me by the Chamber of Commerce, of Zanesville, Ohio—one of many such: It appears that products originating in Germany that are sold in this country in competition with similar articles produced in Zanesville are shipped from originating points in Germany to the ocean and across it to New York, and from there through Zanesville and beyond to Louisville, St. Louis, Chicago, and other cities at a less aggregate rate than Zanesville producers are required to pay to ship their products from Zanesville to Louisville, St. Louis, Chicago, etc.

Numerous similar cases were testified to before the Interstate Commerce Committee.

The purpose of these lower through rates on importations is largely to nullify the tariff duties imposed on such importations and thus defeat the protection intended for our manufacturers. The practice of giving such through rates has grown out of trade competition and necessities, and, it is claimed, that it would be inadvisable on many accounts to prohibit it.

But there is no just reason why, as an offset to its disadvantages we should not have compensation in the up-building, to such an extent as it may contribute thereto, of an American merchant marine.

What is said as to imports being brought in on lower through rates is equally true as to exports, except only that

the volume of exports sent out of the country on these lower through rates is perhaps much greater than the volume of imports. It would be even more inadvisable to interfere with these lower through rates as to exports, since, while they have nothing to do with the tariff one way or the other, they greatly facilitate the marketing of our agricultural and manufactured products. But there is no sufficient reason of which I am aware why these exports and imports, amounting in the aggregate to millions of tons, should not be turned into American bottoms. The only trouble with our merchant marine has been its inability to get business. Without some kind of governmental help it will continue to languish. Subsidies are unpopular and are not likely to be granted. The old policy of discriminating duties, under which our merchant marine flourished during the early days of the Republic, meets with determined opposition every time it is proposed that we should return to it, not only on account of the reciprocal treaties with respect to shipping that we have with other countries, but also because of the fear many seem to have of retaliation.

The provision of this bill avoids all these objections to these respective policies and provides a way that is self-operating and that can not cost the government or anybody else anything, except only the railroads; and to such extent as it may cost them anything the merchant marine will get the benefit of it. If this provision be enacted into law the result will be not an abandonment of through rates but a demand for American ships, which will be speedily built and put in commission as soon as it is seen that business is certain; and this will mean American ships not only for New York and other principal ports that may already have American lines, but also for every port of the country where there may be business for them.

This provision will not be in conflict with any of our reciprocal treaties, and it is not without precedent, for practically the same kind of measures have been resorted to by both Russia and Germany and probably also by other countries.

When the bill comes up for consideration all these points can be elaborated. It is impossible at this time to do more than indicate what the points of the measure are.



RAILWAY-RATE REGULATION.

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SPEECH

OF

HON. JOSEPH B. FORAKER,  
OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

MONDAY, DECEMBER 11, 1905.

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WASHINGTON.

1905.



we legislated on that subject three years ago now almost—in February, 1903—when we passed the so-called Elkins law. In that measure we provided a remedy against rebates. Up to that time the giving of rebates was justly regarded as the worst abuse practiced by the railroads of this country upon the shippers of this country. I had the honor to be a member of the Senate Committee on Interstate Commerce then, as I have now. I had something to do with the putting of that act in the form in which it was finally passed and in which it became a law. We undertook then to deal with rebates and with discriminations. What is the result? According to the testimony of every man who has spoken on this subject before our committee—every man on both sides of this controversy, I think without exception, since that law was enacted and put into force—rebates have practically been discontinued; and, if not discontinued, all unite in saying that the statute thus put upon the statute books by the Congress of the United States is all the legislation that it is necessary to enact in order to provide a legislative remedy full, ample, and complete against that kind of abuse.

Mr. Bacon, who is chairman of the Shippers' Association, who came here as the head and front of this movement—a most estimable man, a worthy, truthful man, for whom I have the highest personal regard because of the good character and good temper he has displayed under all circumstances—testified before the committee—and it has been quoted over and over again in the discussions since he made the statement—that the Elkins law in the provision to which I have called attention makes ample provision against rebates. The testimony is that they have been practically discontinued since the enactment of that statute; and, if not, that the law is all that they have a right to expect of Congress in order that they may be discontinued by enforcing the law.

In that law, Mr. President, we have provided a remedy. The Senator from South Carolina recognizes that, and that is one of the good features of his bill. The Senator proceeds upon the idea that the law already upon the statute book—he evidently proceeds upon that idea—is ample, as he knows it to be, and as all know it to be who have investigated the subject, to prevent the practice of giving rebates. Hence he does not deal with that evil. The mere conferring of power upon the Interstate Commerce Commission to make rates manifestly does not afford any remedy against rebates, for rebates may be granted by the railroads as against rates made by the Commission as well as against rates made by themselves.

Neither is there any remedy that the Senator would adopt in the suggestion that was made in the President's message on this subject, that where one of a number of competing roads grants secret rebates and the Commission learns of it they shall have authority to break up the practice by fixing as the maximum rate the rebate rate—the lower rate. There is no remedy in that, because, Mr. President, I think upon consideration nobody would insist upon what would be so unreasonable in its operation as that would be.

In a case where between two given points there were three lines, we will say, in competition, and one cut the rates, then the Interstate Commerce Commission might solve it by fixing that as the maximum rate for that road in order to pun-

ish it. The trouble is that it would be fixing the rate that the other two competing roads would be compelled immediately to accept, thus penalizing the roads which had obeyed the law, or else they would have to lose their business to the other road, which would be a worse penalizing still.

So it is, Mr. President, I know enough of the Senator from South Carolina, I know enough of his powers of analysis, I know enough of his mental operations, to know he does not purpose, in giving the Interstate Commerce Commission the power to fix a maximum rate, to break up rebates in any such way as that; and yet it must be done in that way or some other such way if it is to be dealt with by the mere conferring of the right or the granting of the power to make maximum rates upon the Interstate Commerce Commission.

Now, passing rebates and passing excessive rates, what is left? Discriminating charges.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. CULBERSON. Mr. President, I have not yet had an opportunity to read all of the testimony taken before the committee, but before the Senator from Ohio passes from the question of reasonable or unreasonable rates, I should like to ask him if it was not reasonably established in those hearings, first, that the rates on lumber from the Southwest were unreasonable; second, that the rates on cattle from the South and Southwest to the Northwest, to feeding stations, were unreasonable; and if it was not established, in the third place, that in numberless cases of ordinary rates they were unfair and unreasonable in this, that they discriminated improperly and unfairly against localities?

Mr. FORAKER. Mr. President, I was just coming to the last suggestion of the Senator. As to the other suggestions he makes, there is much testimony before the committee tending to support what the Senator contends for in that respect. I did not say that there were not unreasonable rates; what I did say was that undoubtedly there are some unreasonable rates. There may be unreasonable rates as to lumber. It may be that there are unreasonable rates in certain instances as to live stock, which the Senator has mentioned. It may be that in many other instances there are unreasonable rates in the sense that they are too high. It would be exceedingly strange if there were not, for these rates cover the whole country, every section of it and every kind of traffic; but what I said was this, that it has been conceded and admitted before the committee and everywhere else by all who have discussed this subject that on the average rates in and of themselves are not unreasonably high, and that, so far as the mere correction of unreasonable rates is concerned, there is no widespread oppression in the country of which the people are now making complaint. What the people have been making complaint about, and justly making complaint about, and what we should provide a remedy against, and what I stand here to help provide a remedy against, is, first, rebates; and, in the second place, the discrimination between localities and between individuals, of which the Senator speaks.

What I was calling attention to was that this measure of the

Senator from South Carolina [Mr. TILLMAN], if I understand it, confines itself to unreasonable and unjust rates. It does not undertake to deal with rebates, and I suppose the reason is because we have already dealt with them with that degree of satisfaction to which I have called attention. It does not undertake, as I understand it, to deal with discrimination between localities or between commodities or between individuals.

Mr. DANIEL. Will the Senator allow me to interrupt him?

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Virginia?

Mr. FORAKER. Certainly.

Mr. DANIEL. What would the Senator propose to do about the unreasonable things done as to localities, commodities, and individuals?

Mr. FORAKER. I am going to speak about that. I am just coming to it.

I do not understand the bill of the Senator from South Carolina to apply to rebates or to discriminations between localities, but to be confined in its operation to the correction of rates that are unreasonably high.

Mr. DANIEL. If the Senator will allow me, I apprehend from his remarks that he proposes to correct one evil and not do anything about the others.

Mr. FORAKER. I do not understand the Senator's inquiry.

Mr. DANIEL. I stated that I apprehended from the tone of the Senator's remarks, if not his expression, that his idea was to pass this proposition of the Senator from South Carolina, and leave the relative discriminations as to localities, commodities, and persons untouched.

Mr. FORAKER. Oh, no, Mr. President, the Senator from Virginia entirely misunderstands me. I started out by saying that this was the best rate-making bill that has been suggested. I adhere to that. It is the simplest, and will do the most good, if anything of that kind is to be put into our legislation, and do the least harm. Nothing else has been proposed that will do anything else except incalculable harm.

Now, I come to answer the Senator from Virginia. I am not going to vote for this bill; I do not want the Senator to get that impression; I am just throwing a few bouquets to the Senator from South Carolina: none, however, that he does not deserve, for his bill does have the merit of brevity and simplicity. It goes straight to the mark, as the Senator always goes straight to the mark; and it would accomplish just what he wants to accomplish, I imagine. But what I am calling attention to is that the bill does not undertake to deal with rebates, as I understand it, and does not undertake to deal with discriminations between localities or any other kind of discriminations. I should have said the reason he does not undertake to deal with rebates, in my opinion, is that he knows that the present law to remedy rebates is working successfully, efficiently, and satisfactorily.

Mr. TILLMAN. Will the Senator from Ohio allow me?

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from South Carolina?

Mr. FORAKER. Certainly.

Mr. TILLMAN. I thought that that law was sufficient; and I still think so—

Mr. FORAKER. As against rebates.

Mr. TILLMAN. But since the suit begun by Messrs. Harmon and Judson, under the instructions of the Attorney-General, had such a miserable and pitiful fiasco, I am led to say that until the Executive stops protecting Cabinet officers from the operation of the law and whitewashing them, we will never have anything done under that law so long as we have the present man in the White House. It is not the fault of the law. The law is all right.

Mr. FORAKER. I am not to be diverted from the discussion of what is properly before the Senate by a reference on the part of the Senator from South Carolina to a particular transaction with respect to which he may think that the President or some other official fell short of doing full duty. If so—if anybody fell short of duty—it is not the fault of the law.

I was proceeding, as I said, upon the assumption that the reason the Senator from South Carolina does not undertake to deal with rebates is that he knows rebates are already successfully dealt with, so far as the law can deal with them. I am glad to have the Senator so state. So we will pass by the question of rebates. He is dealing simply with excessive rates. I do not mean to be put in the attitude of saying there are no excessive rates, but I do want, when I come to discuss that question, to show, in addition to what I have already said about it, that they are not the crying evil and that we can in a better way provide a complete remedy against excessive rates. I am going to discuss my own bill in a few days, and I think I can make every unbiased mind understand that in the courts, immediately upon the presentation of a complaint, there is a complete remedy against excessive rates in the mere exercise of judicial power and without resort to anything that is so radical and revolutionary in its character as to have the Government go into the rate-making business.

Now as to discriminations between localities, coming to what the Senator from Virginia called my attention to, they are the subject of much complaint, but this bill does not undertake to deal with them. Let us assume, Mr. President, that there is a complaint before the Commission—and I speak of this particularly in view of what the Senator from Tennessee [Mr. CARMACK] suggested—that there is a discrimination between roads centering at one particular point, coming from different points. Nobody complains, confining ourselves to that one complaint, that any rate is too high. The highest rate is conceded to be no more than is just and reasonable if it were standing by itself. But they say the relative adjustment is such that the differential amounts to a discrimination. One locality may be only half the distance removed that the other competing locality is, and yet the two may have substantially the same rate.

Will any man tell me how fixing a maximum rate will cure the differential in which is involved the injustice by merely fixing a maximum rate? You can not do it; and the Interstate Commerce Commission have recognized that fact in the bill which they framed and sent to the Senate Interstate Commerce Committee for its consideration, and which is now pending before that committee. They recognized it by providing in that bill that the Commission shall not only have power to fix a maximum rate, but also shall have power to fix a minimum rate; power, if you please, Mr. President, not only to say that the rate from A to B shall be reduced, but, in order to break



up the differential that is complained of, power to say that the rate from C to B shall not be reduced, but shall remain where it is or be raised to a point higher than it is.

The Senator from South Carolina has not undertaken to deal with that question. Until somebody undertakes to deal with it, there will be no remedy presented to this body or any other which will give to the people of this country in its operation as law any remedy for that complaint. Does anybody imagine for one minute that the people of this country would long tolerate the fixing by any body, any tribunal, any Government authority, of a minimum rate below which it would be unlawful for a railroad to reduce its rate if it saw fit?

I am pretty familiar with one kind of complaint involving this identical question. We have heard of it for years in Cincinnati. Years ago we had no direct communication with the South. We are situated on the Ohio River. We were anxious to have southern trade. Louisville had the advantage over us of having the Louisville and Nashville, which carried its products into the heart of the South. To overcome that disadvantage we did what no other municipality in this country has done. At an expense of \$30,000,000 we built a road of our own, which we still own and control and operate through a lessee. Our purpose was to get into the South by a direct line, which would enable us to compete with Louisville. We were looking to the markets of Chattanooga and Atlanta and Meridian and beyond.

When our railroad was completed and was opened for business, and we commenced to ship into the South, what happened? We found not only Louisville in competition with us, but we found New York, 800 miles away, enjoying practically the same kind of a rate into Atlanta and almost as good a rate into Chattanooga as we enjoyed. With Cincinnati only 400 miles away and New York 800 miles away and the rates practically the same, there was an outcry that Cincinnati was being discriminated against; and everybody naturally thought she was, and it may be that she was. But there is a reason for all these things if you will only investigate and find out what it is, and we were not long investigating until we learned that there was another factor besides distance that played not only an important but a controlling part in fixing rates for these various roads. When we investigated we found out that although New York was 800 miles and we were only 400 miles from those points—I am speaking, of course, only in round figures—yet water transportation had such an influence in fixing rates that the railroads out of New York, having to compete with water transportation, were compelled to fix the low rate they did or else everything would go by water instead of rail. We have been fighting that proposition ever since.

Now, it is proposed by the Interstate Commerce Commission in the bill they have sent to us and with which Senators are all familiar, that that differential shall be cured. I take that as an illustration simply. How? They say the Interstate Commerce Commission shall have power not only to fix a maximum rate, but also to fix a minimum rate, and the power to control differentials. What does that mean? It means they are not only to sit in judgment as to whether or not the rate from Cincinnati to Chattanooga or to Atlanta is too high relatively, and whether it shall be reduced, but also as to whether the rates



from Boston and New York and Philadelphia and Baltimore, and all the other Atlantic seaboard cities are too low relatively, and therefore to fix a minimum below which those rates can not be reduced. So they provide in the bill; and what is the provision? Their provision relates only to rail and to part rail and part water. But, Mr. President, unless they apply it to all-water interstate transportation it will be ineffective to accomplish any good. It will be ineffective, because the very minute you fix the minimum by rail in connection with water the water route has only to reduce the rate and everything goes by water instead of by rail. But shall we stop water competition by fixing a minimum rate?

Now, the Senator from South Carolina has wisely abstained, in the drawing of his bill, from undertaking to deal with any such proposition as that. He has wisely abstained, because it is an utter impossibility to deal successfully through any kind of a Government tribunal or agency of the nature of the Interstate Commerce Commission with a difficulty of that nature. The only way you can deal with it is by going into court with your complaint, and going there at once. A court of equity has complete power and you can not take it away, and you can not limit it, or circumscribe it, or deny it, no matter how much you may write it down in the bill. I agree with the Senator from South Carolina in that respect.

The courts of equity, without any legislation on the subject, have complete jurisdiction to entertain such a complaint from any individual citizen who may set up that he is a shipper and is interested. He can thus invoke the exercise of the power of a court of equity. Yet legislation is necessary in that regard, because no individual shipper should be required to embark in litigation with a railroad on the other side about a matter of such minor consequence as the difference may be in a particular rate that is charged. When the shipper goes into court to make a contest of that character against a road, he represents the whole community. He represents not only one community, but many communities. He represents all shippers situated as he is. It is a quasi public proceeding in its nature and in its effect, and we should, by statutory provision, make it so. That is what I have undertaken to do in the bill I have framed. We should provide that whenever there is a complaint of that kind filed with the Commission, it should be sent at once, if there be probable ground for it, to the court, which will sit in judgment, not to make a rate—the court has no power to make rates: that is a legislative function—but to determine whether or not an unjust differential is being enforced, and if so, to find what would be a just differential, and require, by its proper order, the parties interested to conform to it, which would mean that the railroads might fix their rates higher or lower, so far as that order was concerned, but they must fix them so as to make a correct relative adjustment. That is what we are aiming at. We in our part of the country are not complaining of rates in and of themselves. We are complaining of the relative adjustments that we think are wrong and injurious and disadvantageous to us and what we want is a remedy against that condition. We do not want a measure brought in here which I think I can show even to the satisfaction of the Senator from South Carolina is an unconstitutional measure. We do not want a

measure brought in here which, whether it be unconstitutional or not, will involve us in all kinds of litigation as to its validity.

Mr. TILLMAN. Does the Senator say that this bill is unconstitutional?

Mr. FORAKER. No; but at another time I shall undertake to speak on that question.

Mr. TILLMAN. What does he mean to show is unconstitutional?

Mr. FORAKER. I mean to show that the Government has not any constitutional power to make rates in the way proposed through a commission. That Congress may make rates——

Mr. TILLMAN. Then the Supreme Court are in error, because they said that very thing.

Mr. FORAKER. The Supreme Court has not said any such thing as I have read and understood its decisions. Not only is there at the threshold a question as to the right of Congress to make a rate, but there is a question beyond it, of which I have not any doubt at all, and that is whether, this being a legislative power, we have a right to delegate it in the way proposed to a commission or anybody else.

It is one thing to say that the rates shall be so much per ton per mile on a certain kind of a road and under certain conditions, and authorize a commission to make a mathematical calculation and fix those rates in specific figures, and quite another thing to intrust to a commission the work of using legislative discretion in fixing specific rates. It is an entirely different thing for Congress to say rates shall be just and reasonable and then commit to somebody else the exercise of the legislative discretion with which Congress alone is invested. That is a wholly different thing.

The proposition that this is not a delegation of power when discretion is to be exercised is to my mind untenable; but at another time, as I have said, I shall take that up. I only rose to say a great many less words than I have spoken, in answer to the Senator from South Carolina, chief of which were intended to be in the nature of a congratulation to him upon having framed in so few words so simple a measure, if we are going into that business at all; it is simple and easily understood, and, assuming that it could be upheld in the courts, the least harmful of anything that has been suggested, because it confines itself, as I understand, to what really there is no serious complaint about. That is, it does not undertake to deal with rebates; it does not undertake to deal with discriminations; and it does not undertake to interfere with the statute now in force which has been found to be the most salutary legislation that has been placed on the statute books since the original interstate-commerce act was passed in 1887.

Mr. TILLMAN rose.

Mr. FORAKER. I yield to the Senator from South Carolina.

Mr. TILLMAN. I thought the Senator from Ohio was through.

Mr. CLAY. Will the Senator from Ohio allow me to ask him a question?

Mr. FORAKER. Certainly.

Mr. CLAY. Did I understand the Senator to say that Congress has the power to make rates and that Congress can not delegate that power to the Interstate Commerce Commission?

Mr. FORAKER. What I said was that a great many very ex-

cellent lawyers are of the opinion that Congress itself does not have the power to make specific rates. About that I will express no opinion. It may be they are in error. But what I said—and as to this I have no doubt whatever in my mind—was that Congress has no power to delegate to a commission, except in an administrative way, authority to make rates, because that is a delegation of legislative power pure and simple, and you can not find a rule in any of the books or in any of the decisions that will uphold it.

Mr. CLAY. I think I understand the Senator. The Senator, then, denies to Congress the power so to amend the interstate-commerce law as to permit the Interstate Commerce Commission to hear complaints as to whether or not rates are unjust and unreasonable, and if they find they are, to reduce them. The Senator contends that Congress can not delegate to the Interstate Commerce Commission that power?

Mr. FORAKER. Yes. I contend that the delegation of legislative power—I am not undertaking to specify it, but as a general proposition—is prohibited.

Mr. CLAY. I also understand the Senator to say that at present the subject of rebates has been dealt with, and I agree with him—

Mr. FORAKER. Yes.

Mr. CLAY. And so with discriminations. The long and short haul clause of the interstate-commerce act is practically a nullity now under the decisions of our courts, and I understand the Senator to contend that Congress can not go any further than we have gone so far as concerns giving the Interstate Commerce Commission the power to prescribe and fix rates.

Mr. FORAKER. I do. I am opposed to giving the Interstate Commerce Commission the power to fix rates as a matter of policy. I am opposed to it as a matter of power, except in a purely administrative way. I am opposed—

Mr. CLAY. I will say that I do not agree with the Senator from Ohio in the position he has taken.

Mr. FORAKER. I am opposed to it because of the want of power when coupled with legislative discretion, and because, in my opinion, it is bad policy.

Mr. BAILEY. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. BAILEY. I must have misunderstood the Senator from Ohio, but if I understood him correctly he asserts that when Congress confers upon the Interstate Commerce Commission the power to fix a reasonable rate in substitution for an unreasonable one it delegates to the Interstate Commerce Commission the legislative power of Congress, and therefore it is not competent under the Constitution for Congress to pass that kind of a law. Did I understand the Senator to say that?

Mr. FORAKER. That is my opinion if the power be conferred in a legislative way without any qualification whatever, and I see it as plain as a pikestaff.

Mr. BAILEY. Then let me inquire: The Senator from Ohio does not believe that the same reasoning would apply to the commissions created in the several States, which have themselves been authorized not to substitute reasonable for un-

reasonable rates, but to initiate and fix the rates in the first instance?

Mr. FORAKER. Mr. President, that is a different question, dependent upon the particular legislation and the power that is lodged in the legislative department of the particular State government; and when the case is presented we will measure it. What I am referring to is the fact that we are authorized by the Constitution to regulate commerce among the States and with foreign nations, and there are a great many very good lawyers who think that even Congress has no right to fix the price at which transportation shall be furnished any more than it has a right to fix the sum which engineers and conductors and other employees of a railroad shall be paid for their services. A great many good lawyers so contend. I say upon that question I express no opinion, but I have been very greatly impressed with some of the arguments which have been made in behalf of that proposition. I have always supposed that under the power to regulate commerce we ourselves have the right to fix rates, but I have always been of opinion, and never so clearly as since I have investigated the subject, as I have been trying to do during the past summer, that the Congress has no constitutional power to delegate to a commission the legislative authority to make specific rates.

Mr. BAILEY. Will the Senator from Ohio pardon me for another interruption?

Mr. FORAKER. Certainly.

Mr. BAILEY. The Senator from Ohio is well aware, of course, that in the Mississippi commission case—I believe the style of the case is Stone against Farmers' Loan and Trust Company, as I recall it—that very question was distinctly raised. The counsel for the railroad company assailed the constitutionality of the Mississippi law upon the ground that it was a delegation of legislative authority, and the Supreme Court of the United States held that it was not a delegation of legislative authority.

Mr. FORAKER. Under the constitution of Mississippi.

Mr. BAILEY. The court did not predicate its decision upon any peculiar language of the constitution of Mississippi. It seems to me the cases are on all fours. If it was not a delegation of legislative authority for the legislature of Mississippi to empower a railroad commission to fix rates within that State—and, of course, it could only fix them within that State—then it can not be safely asserted to be a delegation of legislative authority for Congress to authorize the Interstate Commerce Commission to perform precisely the same office with respect to interstate and foreign commerce.

Mr. DANIEL. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Virginia?

Mr. FORAKER. At the proper time. I can not yield at present. I have only a few minutes. I have already taken more time than I intended. I will examine the case suggested by the Senator from Texas, and give to the Senator the grounds upon which I differentiate that case from the one I have mentioned.

Mr. BAILEY. I wish to say that I have great respect for any opinion the Senator from Ohio may express upon a question of law after he has investigated it, and he will permit me to say that we will rejoice at the opportunity for that discussion.



Mr. FORAKER. I am glad to make the Senator from Texas happy. We will all be happy many times, Mr. President, before we get through with this discussion.

Mr. CULBERSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. CULBERSON. On the point the Senator from Ohio was discussing, with reference to the delegation by Congress of the legislative power to fix rates, I understand him to say that Congress can not confer on the Interstate Commerce Commission the power to fix rates because of lack of authority to delegate legislative power. Am I correct in that?

Mr. FORAKER. I claim that as a general proposition Congress can not delegate legislative power. The question is whether this is legislative power.

Mr. CULBERSON. I ask the Senator what difference is there in principle between the delegation by Congress of legislative power to a commission to fix rates, and the delegation by Congress of that legislative power to railroad companies to fix rates?

Mr. FORAKER. There is not any delegation of the power to railroad companies. The railroad companies are public utilities, quasi-public corporations, engaged in the transportation of freight and passengers as common carriers, and we have a right to regulate their business. But nevertheless they remain privately owned, although they are doing a public service, and whatever is privately owned the private owners have a right to fix the price of if they are going to part with it to somebody else.

Mr. CULBERSON. The Senator is certainly mistaken. Only one word or so, and I shall not interrupt the Senator further.

By implication at least, Congress has delegated this legislative power to corporations, and in a number of cases it has done so expressly, as, for instance, in the case of the Texas and Pacific Railroad Company, which is a corporation created by Congress and engaged in interstate commerce. Congress clothed that company with the power to fix just and reasonable rates, and in the exercise of that legislative power that corporation does fix reasonable and just rates for interstate commerce. That is the same power that the bill of the Senator from South Carolina proposes to delegate to the Interstate Commerce Commission. There is no difference in principle, Mr. President, I submit to the distinguished Senator from Ohio, between the cases.

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Pennsylvania?

Mr. FORAKER. I will yield to the Senator from Pennsylvania with great pleasure after I shall have answered the Senator from Texas.

If Congress had not said of the subsidized roads, to one of which the Senator has referred, as they did, in making the grant to them and under the circumstances, that they should fix only reasonable and just rates, they would have had the power to fix them anyway. It was in the nature of a limitation and not a conferring of power, and such a legislative declaration was but declaratory of the rule at common law. If there had been not one syllable in any statute on the subject, any shipper could



have gone into a court of competent jurisdiction and enjoined the road from charging more than a just and reasonable rate, because that is all under the law it is entitled to charge. So there was no conferring of legislative power.

Mr. KNOX. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Pennsylvania?

Mr. FORAKER. Certainly.

Mr. KNOX. May I make an inquiry of the Senator from Ohio? I recognize that he has stated the correct rule—that the legislative power of Congress can not be delegated. But is it not the true rule that while you can not delegate the entire legislative power, Congress may prescribe a rule and leave the application of the rule in specific cases to an administrative body, so if the act of Congress provided that rates should be fair and just and reasonably remunerative, or used any other definition that it might see fit to impose, it could delegate to the Commission the power to apply that rule to specific cases as they arise; and has not that been specifically decided by the Supreme Court of the United States in *Field v. Clark* in construing the tariff act of 1890?

Mr. FORAKER. Mr. President, I am glad the Senator has asked that question. It enables me in the most pointed way to show the distinction between what may be conferred and what can not be conferred. In the case of *Field* against *Clark* the President was authorized, when a certain state of facts came to his knowledge, to make proclamation. From and after the issuing of such proclamation Congress said the tariff duty should be thus and so. Now, the Supreme Court held what? That that was not a delegation of legislative authority; that nothing was conferred upon the President of the United States except only an administrative duty to ascertain a state of facts, to issue a proclamation, and then the will of Congress went into operation.

That illustrates exactly what I undertook to say a minute ago. The Congress may say with respect to railroad rates, you shall charge so much a mile on coal, and so much a mile on wheat, and so much a mile on corn, and so much a mile on live stock. Then it can appoint a commission and confer upon it power to name the specific rates. The commission can take a yardstick, measure it off, and determine what the rate shall be by a mathematical calculation. Congress may provide that any road having an income of a named amount over and above all operating expenses shall be allowed to charge so much and no more, and a commission may be authorized to ascertain, as an administrative function, what the rate shall be, applying the conditions that Congress first named.

But when the Congress says reasonable rates shall be charged, that is a law without any declaration of a commission, and although it is important as a statutory provision in another aspect, as I shall point out when I come to discuss this question, it leaves what? A legislative discretion. In the case of *Clark* against *Field* there was no legislative discretion conferred on the President. In the illustrations I have given no legislative discretion is allowed, only a positive duty is affirmatively imposed, and it is the duty of the commission to ascertain and write down the figures that show the result of their computation.

Mr. CARMACK. Mr. President—

Mr. FORAKER. I will yield in just a moment.

But whenever the Congress says we will appoint a commission to ascertain what is just and reasonable, how much shall be charged for carrying cotton from Memphis to the cotton mills of Georgia and South Carolina and North Carolina, and how much shall be charged to carry cotton from Memphis to the North, to Cincinnati, and to New England, and how much shall be charged, taking into consideration everything—the land competition and the water competition also, for the river that runs to the South is in direct competition with the railroads that run to the North—I say there is a discretion that is legislative in its character, as to the fixing of what the rate is, and whenever you undertake to confer upon a subordinate tribunal a legislative discretion you go beyond the limit that Congress is authorized by any decision anywhere, of the Supreme Court or any other, to go in conferring such power. No gentleman can produce any decision that warrants the conferring of any such power. I think I can bring one after another here that draws the distinction just as I have drawn it, and which gives us a guaranty in advance that if we so legislate here as to destroy the law we now have on the statute books and undertake to put such a provision as a number of these that have been suggested on the statute books instead, we will be simply in a situation where we shall have no law at all on the subject.

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Mr. BAILEY. Mr. President, in the course of the remarks made by the Senator from Ohio [Mr. FORAKER] this morning I interrupted him to call his attention to a decision of the Supreme Court of the United States in respect to the right and power of a State to authorize a railroad commission to fix rates within that State. I declared that the counsel for the railroad company in that particular case had contended against the validity of the law upon the express ground that it was a delegation of legislative power. It had been some years since I had read the case, and I was stating merely my recollection of it. I find that it is even stronger than I stated it. It was not the contention of the attorneys for the railroad only, but the court itself in the very beginning of the opinion states that as one of the arguments in support of the decree below, the court below having held the Mississippi statute unconstitutional. After stating the facts, Chief Justice Waite, who delivered the opinion of the court, continued:

The argument in support of the decree below is:

1. That the statute under which the commissioners are to act impairs the obligation of the charter contract of the Mobile and Ohio Railroad Company.

It is fair to say that two distinguished justices dissented from the opinion of the court, basing their dissent upon the ground that the Mississippi act did not impair the obligation of the contract with the particular railroad which was a defendant in this case.

2. That it is, so far as that company is concerned, a regulation of commerce among the States;

3. That it denies the company the equal protection of the laws and deprives it of its property without due process of law;

4. That it confers both legislative and judicial powers on the commission, and is thus repugnant to the constitution of Mississippi; and

5. That it is void on its face by reason of its inconsistencies and uncertainties.

The court considers, in order, each ground stated, and referring to the fourth contention, that the act of the Mississippi legislature conferred both legislative and judicial functions upon the commission which the act created, the Supreme Court declared—dismissing it in one brief paragraph—

The Supreme Court of Mississippi has decided in the cases of Railroad Commission *v.* Yazoo and Mississippi Railroad Company, and Railroad Commission *v.* Natchez, Jackson and Columbia Railroad Company—

My opinion is that is a misprint. It should be the Natchez, Jackson and Columbus—

not yet officially reported, that the statute is not repugnant to the constitution of the State "in that it creates a commission and charges it with the duty of supervising railroads. To this we agree, and that is all that need be decided in this case.

I take it that it will be difficult to distinguish—I mean to distinguish upon that particular objection—between the power of a State legislature to delegate its right to fix rates and the power of the Federal Congress to delegate its right to fix rates. If the State of Mississippi can create a commission and authorize that commission to fix the rates which the railroads should receive for their services in that State, and our highest court holds that not an unlawful delegation of the legislative power of that State, I am utterly unable to perceive how it can be successfully contended that a law of Congress empowering a commission created by Congress to substitute a reasonable for an unreasonable rate is an unwarranted delegation of our power.

Now, it is true, as suggested by the Senator from Ohio this morning, that this case only involved the validity of that law under the constitution of Mississippi, but as I suggested to him, neither the State court nor the United States Supreme Court predicates its decision upon any peculiar language of the constitution of Mississippi. Where the constitution had authorized and created a commission, as in the case of our own State, it might then be contended that there was a difference, but if it is a delegation of the legislative authority I doubt if a State, even by constitutional enactment, could make such a law valid, because I am inclined to think that the Supreme Court of the United States would hold that any law which authorized a commission to exercise the legislative functions of a State is not the due process of law as required by the Constitution of the United States.

In other words, I am inclined to think that the requirement that all property rights in this country shall be adjudicated and protected under the due process of law would lead the Supreme Court of the United States to hold a provision in a State constitution which authorized the delegation of its legislative power to be void and without effect.

Mr. FORAKER. Mr. President, when during the discussion this morning the Senator from Texas called my attention to this case, I did not distinctly recall what the case was. But after I took my seat I sent to the Library and got the case, and I find it not to be in conflict with what I had stated, in answer to which the Senator cited the case. What I stated was that I did not understand that it had been decided by the Supreme Court of the United States, in any case or by any other court, that legislative power could be constitutionally delegated to a commission such as the Interstate Commerce Commission, or any other tribunal.

Mr. BAILEY. Of course the Senator from Ohio did not understand me to assert that legislative power can be delegated?

Mr. FORAKER. No; certainly not. The Senator agreed with me on that general proposition, but differed with me as to the application of it.

I then went on to say that it was a delegation of legislative power to confer on a commission the power to fix specific rates, except only where they did it in an administrative way, illustrating it with some instances which I gave on the spur of the moment. However, I then sent for this case to see whether or not I was in error in the statement I had made that there was no decision of the Supreme Court in conflict with the statement in that respect which I had made. I find that the question that we were discussing is not involved in this case at all.

This was a case, Mr. President, where a suit was brought to enjoin the commissioners of the State of Mississippi from applying to the railroad that was complaining the provisions of a statute one section of which conferred on the railroad commissioners of that State the power to fix maximum rates. No maximum rate had been fixed. No action whatever had been taken under that statute by the railroad commissioners of the State of Mississippi. So the precise question we have been discussing was not involved. But the main question involved was whether or not that statute was in conflict with the charter of the railroad, which they claimed was in the nature of a contractual obligation, binding on the State, conferring upon the railroad the power to fix its own rates. The Supreme Court held that this legislation was not in conflict with that right which had been conferred upon the railroad in its charter; and it nowhere considered whether or not it was competent for the legislature to confer on the commission the power to make a rate. What it says upon that subject is that the State of Mississippi has the power to fix railroad rates. Nobody disputes that. The sovereignty of the State is supreme and complete, and it can do that.

Another and very different question arises as to the constitutional power of the United States, acting through Congress, to fix rates. It is very ably insisted by some lawyers that the power has not been conferred by the States upon the Federal Government to fix rates, even by an act of Congress. But I was careful to say I do not now agree with that proposition. There is a good deal to be said, however, in support of it.

Mr. BAILEY rose.

Mr. FORAKER. I was about to call attention to what the case really is and what the Court really decided.

Mr. BAILEY. If the Senator from Ohio will permit me to call his attention to one point, he can answer both at once.

Mr. FORAKER. Very well.

Mr. BAILEY. He now raises rather a different question. When I first interrupted the Senator it was with respect to what I understood him to say in reference to the delegation of legislative authority. I understood him to contend that to authorize the Commission to make rates was a delegation of legislative authority, and therefore not permissible.

Mr. FORAKER. Not in all cases.

Mr. BAILEY. Then in answer to that I called his attention to the decision in the Mississippi case. The Senator is mistaken when he says the court has never held that any State has a



right to create a commission to fix rates. They precisely held that in the Reagan case. They held the rates as fixed by the railroad commission of Texas invalid and not enforceable, because they held that those particular rates were confiscatory. But they expressly held the law itself, which authorized the fixing of rates by a commission, to be a valid exercise of the power of the State. The Reagan case holds distinctly, unequivocally, and without any question that a State may create a commission and authorize it to fix railroad rates; and the rates when so fixed must be respected by the railroads unless they are confiscatory.

Mr. FORAKER. We will come to the Reagan case in due time. I want to get through with this case before I leave it. This is the case the Senator cited this morning. I sent to the Library for it. I have it here. I read it. I have it in my hand now. I want to point out what this case decides. I wish to show it does not decide any such thing—saying it with all proper respect—as that it is competent for the legislature to confer upon a commission the right to fix specific rates where it must exercise the legislative discretion that is involved in legislation.

Now, it will be borne in mind that I differentiated. I said this morning there might be a lawful authorization of a commission to fix rates where a rule was prescribed by the legislature that left nothing for that body to do except only to make a mathematical calculation or to make some sort of computation. They could do that—that is an administrative act—where it was necessary only to ascertain a state of facts to give effect and operation to something the legislature had declared should go into effect and operation when such a state of facts was declared to exist, as in the case of *Field against Clark*.

In the case which the Senator cited this morning I find the principal question involved was whether or not the provision made by the legislature of Mississippi, conferring on the commission the general power of regulation, including the power to fix maximum rates, was in violation of a charter provision under which the railroad was organized and took its franchises and was operating which conferred upon it the power to make its own rates. The Court held that there was no conflict.

The last paragraph of the syllabus shows what the court decided in that respect:

The provisions of the statute of Mississippi of March 11, 1884, creating a railroad commission, are not so inconsistent and uncertain as to necessarily render the entire act void on its face—

Clearly indicating that there were a number of provisions, as they afterwards say in so many words, under which serious questions might arise, and undoubtedly would arise if the statute should be put into operation, upon which it was not necessary for the court then to pass and upon which it did not pass, but reserved the same until the questions actually arose.

Now, turning to the opinion of the Court, I call attention to the fact that what the Court says is this, which nobody disputes:

It is now settled in this court that a State has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter, or unless what is done amounts to a regulation of foreign or interstate commerce



Nobody denies that the State has that power. The question whether or not the State, acting through the legislature, in attempting to exercise that power had the right to delegate it to a subordinate tribunal which the legislature created—and that is the question here involved—the Supreme Court does not pretend to pass upon. That is what it says at that point. Now, let me call attention to what the Court says further on. After discussing this whole subject, at page 331 the Court says, concluding that branch of the discussion:

Under pretense of regulating fares and freights the State can not require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation or without due process of law. What would have this effect we need not say now, because no tariff has yet been fixed by the Commission—

Reserving the whole subject about which we are having a discussion now—

and the statute of Mississippi expressly provides “that in all trials of cases brought for a violation of any tariff of charges as fixed by the Commission it may be shown in defense that such tariff so fixed is unjust.

Now, further, at the conclusion of the next paragraph, page 333, the Court, after pointing out the nature of the statute, that a portion of it relates to rates and a portion of it to ordinary police regulations, says:

The first three of these relate entirely to proceedings for fixing charges and supervising the tariff, and the rest, like the correlative requirements of the company, are mere police regulations, which the commissioners are to enforce. All this comes clearly within the supervising power of the State in the administration of the affairs of its domestic corporations.

Nobody disputes that the State has the power to do that. The question is whether or not the State, acting through the legislature, shall exercise this power directly, or whether, being legislative in its character, it can confer the power upon some subordinate tribunal to represent it.

We conclude, therefore, that the charter of the company contains no contract the obligation of which is in any way impaired by the statute under which the commissioners are to act.

That shows what the Court was discussing. Now, on page 334 the Court says:

Every person, every corporation, everything within the territorial limits of a State is, while there, subject to the constitutional authority of the State government. Clearly under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and everything within the State which is the lawful subject of State government. It may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the State.

That is as far as the Court goes, and nobody disputes that proposition. The State may do it. The State may by its legislature enact what shall be maximum rates, but the question is whether or not the State undertaking to exercise that undisputed power and authority has the right to constitute a subordinate tribunal and invest it with the legislative power which the constitution of the State has reposed in the legislature.

Now, I say that nowhere—I will address myself to the Reagan case after I have looked at it again, and if I am mistaken about it I will be only too glad to make proper acknowledgment of the same—I say that nowhere, according to my present understanding of these cases (and I have read all of them) has the Supreme Court said that the legislative power to make rates can

be delegated to a commission. And when I say that I do not mean that the Court has not said that the power to make rates may be conferred on a commission. It can be; it has been; and it has been upheld, but always after the legislature has fixed a rule for the commission to be governed by in taking its action, which deprives the commission of the exercise of any legislative discretion. The differentiation is between investing the tribunal with legislative discretion and simply making it an administrative body.

Mr. President, that was recognized in the President's message. The Senator from Texas must have noted—he could not help it: his legal mind is such it could not possibly have escaped him—that the President was careful to say this power should be conferred on an administrative body; “purely administrative body,” I think, was the language. To say it shall be purely administrative does not, however, make it so. It is a “purely administrative body,” not because you name it such, but because the powers conferred on it make it such, if it be an administrative body at all.

You can not say that the Interstate Commerce Commission shall have power to make rates, taking into consideration all the conditions that give rise to competition; that they shall exercise judgment as to the weight to be attached to this, that, and the other factors entering into a problem, and then arrive at a conclusion and make a rate. You can not say they can do that without investing them with legislative discretion.

Mr. SPOONER. Which is the legislative function in the operation to which the Senator has referred?

Mr. FORAKER. The legislative function is in fixing a rate that calls for the exercise of judgment, that calls for the exercise of discretion. There would be no legislative discretion if, as I said this morning, Congress were to say that the rate shall be so much on this or that or the other commodity per ton per mile, or if it should say the rate shall be so and so over a road earning so much per mile within a certain time. It would be a matter then of administration for the board to make a calculation upon and reach a conclusion in regard to it. There is in such case no discretion. In the other case there is discretion, and that is the point which runs through all these authorities. That is a point which is not touched in this case at all.

It is getting late and we have a lot of other matters to attend to.

Mr. HALE. The Senator from Ohio is putting his point with great strength and vigor. What I would like from him is a statement upon the distinct point he is now touching, whether it is easy in a statute to draw this distinction or differentiation so as to make plain where the legislative power is kept in the legislative body and the administrative functions are imposed upon another body. Is that an easy thing to do? From his study and investigation of this great subject, has the Senator the belief that his proposition is easily translatable into statute language?

Mr. FORAKER. No, Mr. President; I do not think it is easy to make a law that is constitutional conferring on the Interstate Commerce Commission the power to make rates, because to make it constitutional Congress must prescribe the conditions that shall govern rates, so that there shall be nothing left to

the Commission except that which is administrative or mere computation. I think it would be very easy for us to confer upon them the right to make rates at so much per ton per mile, but I think it would be very bad policy, and therefore I do not think there is any likelihood of our enacting legislation of that kind. We might find some other and easier way, but what I mean is that it is not easy, if you establish a rule by the conditions you name, to permit rates to be made as they always have been made in this country, as a result of competition and the operation of the laws and the forces of trade and commerce.

Mr. BAILEY. Mr. President, a moment only. I agree with all the Senator from Ohio read from the opinion of the court in the Mississippi case, and my only complaint is that he did not read the only paragraph in the opinion which is precisely pertinent to the issue between him and me.

The Senate will remember that this morning, when the Senator from Ohio expressed the opinion that it was not competent for Congress to delegate, as he expressed it, its legislative power to the Commission, I inquired if I understood him to contend that the proposal to authorize the Interstate Commission to fix rates was such an unlawful delegation of our authority. He replied that I did, and then I reminded him rather inaccurately that the counsel for the railroads in the Mississippi case had urged that very contention, and that the court had overruled it. I sent for the decision, which I said a moment ago I had not read for several years, and I find it is even stronger than I stated; that it was not the contention of counsel only, but the restatement by the court itself of all the contentions in the case; and the court states one of the contentions to be that the law was invalid because it conferred judicial and legislative power upon that Commission.

I want to remind the Senator from Ohio, when he says that this case simply asserts the power of the State to control rates, that he overlooks the fact that the Court sustains the validity of the Mississippi law which created a commission to fix those rates. The very substance, the very essence of the law whose validity was sustained in the Stone case was the commission created by the legislature of Mississippi, which was given the power to fix rates, not so much per ton per mile, but they were given the power to fix rates.

My own opinion is that this tribunal which we commonly call a "railroad commission" is administrative rather than legislative; but to say that the legislature has the power to fix the rate and deny it the right to select the most appropriate and the only safe means of executing that power, would be, I venture to say, with all due respect to the Senator, an obvious absurdity. If the legislature have the power to fix the rate, then surely the legislature must have the power to create an administrative board to carry out its will; and that practically is what the court says in the Reagan case.

But if the Senator turns from the Mississippi case, overlooking the fact that that law was sustained when attacked, and when one of the very grounds of attack was that it was a delegation of legislative power, which the State was not competent to make—

Mr. FORAKER. Will the Senator allow me to interrupt him?

Mr. BAILEY. I will. But I was right in the middle of a sentence.

Mr. FORAKER. Oh, I beg pardon.

Mr. BAILEY. I yield cheerfully.

Mr. FORAKER. I wish to call the attention of the Senator from Texas to the very limited extent to which the Supreme Court upheld this law.

They say on page 336:

The argument on this branch of the controversy—

As to the validity of the statute—

contains much that might have been useful if addressed to the legislature while considering the bill before its final enactment, but we find nothing in it to show that the statute as it now stands is altogether void and inoperative.

Having pointed out that there were many things under the statute which would perhaps be held to be so, the question was all the while whether this general statute should be allowed to go into operation, and whether, if it did, it would violate the charter rights of the road, which it was contended were involved.

Mr. BAILEY. But the court would never have said it was a question addressing itself either to the judgment or the conscience of a legislature, if that legislature had undertaken to abdicate its legislative functions and to delegate them to another body. I venture to say that if a sovereign State should in its constitution solemnly provide that some other body than the legislature should exercise the legislative function and any man's rights were imperiled or destroyed under the decision of this nonlegislative body exercising legislative functions, he would find a ready redress for the wrong in the Federal courts of this country, and the Supreme Court of the United States, in my judgment, would unhesitatingly declare that he had been deprived of his property without due process of law. For a century, the Senate must know, one invariable test of the due process of law has been that legislatures must exercise legislative powers and courts must exercise judicial powers; and if a State should so far forget the wisdom of our system as to confer its legislative powers upon the court and clothe the legislature with the judicial function such an enactment would not stand the test of an hour's scrutiny in any enlightened court in this land.

Mr. SPOONER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Wisconsin?

Mr. BAILEY. I do.

Mr. SPOONER. Of course, it has been held by the Supreme Court of the United States, as I remember, that the fixing of a rate to take effect in the future is a legislative function.

Mr. BAILEY. The court in the Reagan case says "legislative or administrative."

Mr. SPOONER. Very well; I think the Court changed that afterwards. But what I want to ask the Senator is whether the question of the reasonableness of a rate, having been fixed by a railroad company and challenged, is, in his opinion, an administrative question.

Mr. BAILEY. The reasonableness of that particular rate is a judicial question. The courts held——

Mr. SPOONER. I thought the Senator called it an administrative question.



Mr. BAILEY. No; the reasonableness of the rate established the question as to whether it is reasonable or not—is a judicial inquiry or a judicial question, but the establishment of it is an administrative function, in my judgment. The court says in the Reagan case:

It is doubtless true——

Mr. SPOONER. Of course, if the Senator will allow me, I do not disagree with him. Whether a rate exacted from John Smith for a specified service be an unreasonable rate or not——

Mr. BAILEY. That is a judicial question.

Mr. SPOONER. The Senator will agree with me that that is absolutely a judicial question.

Mr. BAILEY. I do; otherwise the court could not determine whether it was confiscatory or not.

Mr. SPOONER. Is the question whether that rate, having been held to be a reasonable rate, shall be effective in the future as a maximum rate, a matter of legal province, or is it legislative or is it administrative?

Mr. BAILEY. Is the Senator through with the question?

Mr. SPOONER. Yes.

Mr. BAILEY. I think it is an administrative, or rather a legislative, question, and then if the legislature desires that it shall be reduced, the extent to which it can be or may be reduced can be assigned by the legislature to an administrative board. Of course, when you present the question to a court as to the reasonableness of an existing rate, that question is determined by conditions existing then, determined not only by conditions existing at the time the railroad fixed the rate, but the court must take into consideration conditions existing at the time when it is called upon to pass its judgment.

Mr. FORAKER. Mr. President——

Mr. BAILEY. The Senator from Ohio will permit me to finish the quotation which I had begun from the Reagan case. The court in that case declares:

It is doubtless true, as a general proposition, that the formation of a tariff of charges for transportation by a common carrier of person or property is a legislative or administrative rather than a judicial function.

Further on in that very case the State of Texas contended that it was not a judicial question whether the rate existing was a reasonable one or not, but a purely legislative one, over which the courts had no control. The Supreme Court of the United States decided adversely to the contention of our State in that respect, and held they could pursue an inquiry into the reasonableness of these rates, and now for the last time I remind the Senator from Ohio that in that very case the Supreme Court declares the law of Texas constitutional, although the inferior court—and if it were parliamentary I would use the word “inferior” to describe the judge as well as the court—the inferior court held that the law was unconstitutional. The Supreme Court of the United States overruled that decree to that extent, but they enjoined the enforcement of the rate, because upon an elaborate consideration as to the value of the property and the schedule of the rates they held that those rates would not return a sufficient sum upon the property to protect the railroad in its rights, and that to enforce that schedule of rates would be confiscatory and therefore unlawful. Upon that



ground only they enjoined not the law, for they set aside the decree of the court that held the law void, but they enjoined the enforcement of the tariff schedule adopted by the commission under the law.

Mr. FORAKER. I shall not undertake at this late hour of the evening to take up the discussion of the Reagan case. I will reserve until to-morrow or some other convenient time the right to make some remarks in answer to the Senator's comments upon that case. I think, in view of the pressure for executive business, I will wait until to-morrow or some other convenient time to call the Senator's attention to what is a lawful rate. My contention is that the statute has already fixed the lawful rate; and I want to speak in answer to the Senator's suggestion about the right of a court to enjoin everything that is exacted in excess of what is lawful. That is not making a rate. It is only giving effect to the rate that Congress has already prescribed.

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*Wednesday, December 20, 1905.*

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Mr. FORAKER, having inserted in the RECORD the opinion of Judge Bethea in the cases of the Interstate Commerce Commission against the Chicago Great Western Railway Company and numerous other railroad companies, said:

I next offer an analysis of that decision, stating in part what it shows, by a member of the bar of the city of Chicago, Mr. Blackburn Esterline.

Mr. CULLOM. Will the Senator just announce the name of the gentleman who gave the last opinion?

Mr. FORAKER. I have just given the name of the gentleman who sent me the analysis of the decision.

The VICE-PRESIDENT. The paper will also be printed in the RECORD, as the Senator requests, if there is no objection.

The paper referred to is as follows:

An analysis of the above decision, stating in part what it shows, by Blackburn Esterline, esq., a member of the bar of the city of Chicago.

(In the circuit court of the United States, northern district of Illinois, eastern division.)

(No. 27723.—Interstate Commerce Commission *v.* Numerous railway companies.)

(No. 27829.—Interstate Commerce Commission *v.* Numerous railway companies.)

The above cases, in which about twenty railway companies were represented, were decided by Hon. S. H. Bethea, sitting in the circuit court of the United States, on Monday, November 20, 1905, and the bills filed by the Interstate Commerce Commission were dismissed.

The defendants are carriers from the Missouri River and St. Paul to Chicago. Prior to August 8, 1902, the published rates of the companies for carrying fresh meats and packing-house products from the points named to Chicago were the same as the published rates for carrying live stock from the same points to Chicago. On that date the Chicago Great Western Railway Company, which had the longest route, in order to secure business entered into a contract in good faith with the Missouri River packers, in which it cut the rate on fresh meats 3 cents per hundred pounds. This inaugurated a stiff competition on the part of all the roads for the fresh meat and packing-house products, on which the rates were severely cut, though the rates on live stock remained unchanged. The Interstate Commerce Commission held that this was in violation of the interstate-commerce act and that it constituted a wrongful prejudice and discrimination; the carriers were ac-

cordingly ordered to lower the rates on live stock also, and to cease and desist, etc., on or before February 15, 1905, wherein they failed, and the Commission commenced the suits.

By counsel for the Commission it was contended that the rates were unreasonable under section 1, and that the defendants were committing an unlawful discrimination against the locality of Chicago and against live cattle and live hogs and the shippers thereof, and that they were giving an undue and unreasonable preference or advantage to the traffic in fresh meats and packing-house products, in violation of section 3 of the interstate-commerce act and the Elkins Act. The railway companies denied the charges, contending that there was no relative similarity between the products and the live stock; that when the cost of service was considered they could carry the products cheaper than the live stock; that the risk of carriage of the former was lower, and that the difference in rates was the result of competition.

The hearing lasted a month and 4,000 pages of testimony were taken and considered, together with many tables, etc. The case generally and the opinion of the court hinged largely on the question of competition, which became the controlling factor. It was said by counsel for the Commission that competition was not a factor to be considered in determining the question of fact as to undue preference and unjust discrimination, but the court held that it was. In other words, it held that the question of undue preference and unjust discrimination against one place over another is secondary to the question of competition of railway companies when the competition is not the result of agreement, but is carried on in good faith in order to get business and the rates reasonable and remunerative to the company.

Judge Bethea, in his opinion, declared that he had given as full consideration to all the facts and circumstances in the case as it was possible for him to give; and, after such full consideration, he held that the prima facie case as made by the findings of the Commission had been overthrown by the evidence taken before him.

The very important feature about it all is this: That if the Interstate Commerce Commission had had the power, on February 15, 1905, to enforce the order it entered on that date to lower the rates on live stock also, the Chicago, Milwaukee and St. Paul Railway Company, as shown by the sworn testimony, based on the business of the past year, would have sustained an actual and direct loss, during the time which elapsed before the court set aside the erroneous order, of \$300,000; the Chicago, Burlington and Quincy Railway Company a like sum, and the Chicago and Northwestern Railway Company a like sum, and all the other defendants an actual and direct loss equal to that sustained by the three companies named, making a total of \$1,800,000. It also appeared that the indirect losses of all the companies would have doubled the latter sum.

Mr. FORAKER. Now, in addition to what is thus made to appear, I wish to call attention to the fact that it appears from this opinion of the court and from the record that complaint in this case was filed before the Interstate Commerce Commission March 31, 1902; that the hearing upon that complaint was not commenced before the Commission until January 22, 1903, and that the Commission's decision on that complaint, finding that there was discrimination and ordering a discontinuance of it, was not rendered until January 7, 1905. When rendered it was ordered that it go into effect February 15, 1905. The order was disregarded by the railroads, and subsequently, upon the order of the Interstate Commerce Commission, suit was brought against them to enforce the order of the Commission on the 29th of April, 1905. The Commission afterwards brought an additional suit under the Elkins Act, July 17, 1905. The court thus being appealed to took up the cases, as it was required to do under the law providing for a summary proceeding in such a case, heard many witnesses, the testimony in the aggregate amounting to something like 4,000 pages, and rendered a final judgment November 20, 1905.

I introduce all this simply to show, if I may be allowed to add a word, the state of the law with respect to remedies against certain of the evils that are complained of, and showing

also, not only that there is a remedy in court ample for most of the evils that are complained of, but the expedition with which that remedy can be arrived at in the court. Instead of a proceeding pending for two or three years, as this did before the Commission, by the reference of it to the court as provided in at least one of the bills that have been introduced, that the court shall proceed summarily and hear it, the court proceeded and considered the whole case, and all the cases, and rendered final judgment which, when you come to look at the opinion of the court, you will see covered every aspect of the case and accomplished it all in something like five or six months from the time when the suit was commenced in the court.

Mr. CULLOM. In brief, what was the decision of the court?

Mr. FORAKER. I did not expect to speak of that, for I did not want to comment on it at any length and take the time of the Senate now; but the court reversed the order of the Interstate Commerce Commission, finding that it was erroneously made, and that there was no such discrimination as the Commission had found.

In the analysis of the case which I have filed, made by Mr. Esterline, it is shown that if the order had gone into effect at the time when it was made by the Interstate Commerce Commission, or at the date fixed by the Commission, February 15, 1905, for it to take effect, it would have cost the railroads in loss of revenue, and wrongful loss, according to this decision, almost \$2,000,000 by actual computation based on sworn testimony.

I put this in the RECORD to show the character of legislation that is being proposed, and in order to show the remedies we now have, in order that before we provide others we may know what we have.

I ask that the decision of Judge Bethea and the accompanying statements may be also printed as a document.

The VICE-PRESIDENT. Without objection, it will be so ordered.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. CULBERSON. I understand that one of the papers introduced by the Senator from Ohio—at least offered by him for publication in the RECORD—constitutes the instructions issued by the Attorney-General quite recently to the district attorneys of the United States throughout the country. I understood the Senator to say, in some remarks which he submitted a week or so ago in the Senate, that there was no longer any complaint respecting rebates by railroads.

Now, I will ask him this question: Pursuant to those instructions of the Attorney-General did not a grand jury at Philadelphia and at Chicago last week return a number of bills of indictment against officials of railway companies for granting rebates, and if the Senator has that information will he not also insert it in the RECORD to go along with his statement?

Mr. FORAKER. Mr. President, I have no objection to the Senator inserting in the RECORD anything he may desire to have inserted in the RECORD.

With respect to the statement I made about rebates, the Senator has not accurately quoted me. Inadvertently, of course, the inaccuracy crept into his statement.

What I said about rebates, as I now recall my language, was that it was generally conceded that since the passage of the Elkins law rebates had been practically discontinued, and if not discontinued the law was ample, if properly enforced, to compel the discontinuance of rebates.

The States have very good laws against arson, against burglary, against murder. The legislatures of the States have done all they can reasonably do to prevent those crimes; but notwithstanding the law they will be and are committed.

I did not say there were no rebates. I did not say there were no excessive rates. I said there was provision by law against rebates and against excessive rates and against discrimination, and that so far as rebates are concerned, if not discontinued, all the Attorney-General had to do was to enforce the law and he would come as near breaking up the practice as you can come by enforcing any law to break up any criminal practice.

If some Senator will point out to me what I said on that subject I will read it.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly. I was just looking to find what I said.

Mr. CULBERSON. Mr. President, I do not remember, of course, exactly what I said a moment ago, but I think I said the Senator stated in a former speech in the Senate that there were no complaints at this time against the system of rebates. What I desired was to call his attention to the question as to whether he was not mistaken in that statement. Of course it is a mere expression of opinion to a degree, but that there were complaints is shown by the instructions of the Attorney-General of the United States quite recently, and that acting upon those instructions it had been discovered by the grand juries at Philadelphia and at Chicago that rebates had been granted by railroad companies within very recent times.

I was simply calling attention to it to show, if I could, that the Senator was mistaken in the opinion he expressed, that there were now no complaints against the system of rebating since the passage of the Elkins law.

Mr. FORAKER. If the Senator will allow me, I will now quote from the speech I made a few days ago in the Senate to which he referred, so that I may in that way put before the Senate exactly what I did say:

So far as rebates are concerned, we legislated on that subject three years ago now almost—in February, 1903—when we passed the so-called "Elkins law." In that measure we provided a remedy against rebates. Up to that time the giving of rebates was justly regarded as the worst abuse practiced by the railroads of this country upon the shippers of this country. I had the honor to be a member of the Senate Committee on Interstate Commerce then, as I have now. I had something to do with the putting of that act in the form in which it was finally passed and in which it became a law. We undertook then to deal with rebates and with discriminations. What is the result? According to the testimony of every man who has spoken on this subject before our committee—every man on both sides of this controversy, I think without exception, since that law was enacted and put into force—rebates have practically been discontinued; and, if not discontinued, all unite in



saying that the statute thus put upon the statute books by the Congress of the United States is all the legislation that it is necessary to enact in order to provide a legislative remedy full, ample, and complete against that kind of abuse.

So the Senator will see I did not say there were no rebates being granted now. I have no doubt there are some violations of this law, as there are violations of every law on the statute books. These railroads extend all over this country; the rates number into the millions; shippers are every day sending their products over these roads not only by thousands but by hundreds of thousands. It would be quite singular if there were not some violations.

What I was calling attention to is the fact which stands uncontradicted—no man can successfully contradict it—that the Congress has undertaken to provide a complete remedy against that abuse, and I think it will be found to be a sufficient remedy if the Attorney-General will only continue, as he has now started in to do, to enforce the law vigorously, rigidly, as the Congress expected him to do when it was enacted.

But however that may be, as the Senator from Massachusetts [Mr. LODGE] well suggests, the mere fixing of a rate, a maximum rate or a minimum rate or any other kind of a rate, will not afford any remedy for the granting of rebates.

But I did not want to engage in any discussion at this time of this subject. I wanted to put in the RECORD, where it will be available to all who may desire to read it, that which I think is very pertinent to be considered at this time as showing the state of the law with respect to this whole subject.

I take it the Congress does not want to legislate unless there is some necessity for it. My opinion is, as I have said over and over again, that the legislation which is needed is not something that is revolutionary in its character, but a mere amending and strengthening of the law that is now on the statute book. In that way every abuse that is complained of can be reached and can be successfully dealt with, in my opinion.

Mr. CULBERSON. Mr. President, the purpose I had in view, and the only purpose, was to draw attention to the fact that railroad companies quite recently have granted rebates and have been indicted for that offense.

The speech of the Senator from Ohio a week or so ago had a distinct purpose in view. He was arguing against any legislation on this subject. He was stating reasons which, in his opinion, rendered any further legislation upon the rate question useless and unnecessary. Among other propositions he made was the proposition with reference to rebates that no other legislation was necessary for two reasons. One was that rebates had practically ceased, and the other was that we have a sufficient law upon the subject already. All the purpose I had in the inquiry I made of the Senator from Ohio, Mr. President, was to show that in his statement that rebates had practically ceased by reason of the Elkins law he was simply mistaken.

It is true the Senator from Ohio has introduced a bill in the Senate providing, in effect, as I construe the bill, that the courts of the United States may fix rates that shall be operative in the future, because that proposed law, as I construe it, provides that the courts shall discriminate between what part of the rate is unreasonable and what part is reasonable, and shall restrain the



operation of the unreasonable part, leaving the remainder of the rate in force, which, as I understand the English language, means that these courts shall, in effect, establish a rate which shall operate in the future.

Mr. President, I said a moment ago that, as I understood the object of the Senator from Ohio a week or two ago, he was opposed to any legislation upon this subject. That statement apparently was rather broad and probably too broad, because the Senator himself, as I knew at the time and I ought to have stated at the time, has introduced a bill upon the subject.

What I intended to state, Mr. President, was that the Senator was opposing any additional legislation upon the subject of rebates upon two grounds, I reiterate, the first of which was that rebates had practically ceased and that the legislation existing upon the subject at this time was sufficient. I did not intend to provoke any debate upon this subject, but I wanted the statement to go along with his statement in the RECORD with reference to the instructions of the Attorney-General, that those instructions had brought forth fruit and had secured the indictment of a number of railway officials, as I understand it, at Philadelphia and Chicago for this illegal conduct.

Mr. FORAKER. Mr. President, the Senator entirely misunderstood me if he got the idea from anything I said when I spoke here a week or ten days ago, or from anything I have said at any time, that I did not think it necessary to have any additional legislation. On the contrary, I have all the while advocated additional legislation. The only difference between the Senator and myself, and the only difference between other Senators and myself, is as to the particular remedy which we shall undertake by law to provide to correct the abuses that are being practiced.

The remarks I made the other day were upon the bill introduced by the Senator from South Carolina [Mr. TILLMAN]. I was complimenting him upon the simplicity of his measure and upon the fact that it did not undertake to deal with a lot of subjects that had already been satisfactorily dealt with, in my opinion; and I did call attention to the fact that, so far as rebates were concerned, it is the commonly expressed opinion that since the Elkins law was enacted rebates have been practically discontinued. And why discontinued? Because the railroads and the shippers alike knew that there was a law since that time on the statute book which by its mere enforcement would bring punishment upon them if they granted or accepted rebates. I did not pretend to say that there have been no rebates granted since the enactment of the Elkins law; I did not pretend to say that the railroads were not giving rebates to-day. On the contrary, I said that, if not practically discontinued, as had been suggested by witnesses and as we had been told by everybody who has discussed this subject, there was a law, and it was ample, if properly enforced, to break up and discontinue the practice. That is all there was of that.

I do not want to drift into a general discussion of this subject this morning, but the Senator made some remarks about the lack or want of power in the courts to enjoin what is an unreasonable or an excessive rate that is being charged. That is a pretty broad subject.

I read an interview, or what purported to be an interview, with the Senator from Texas [Mr. CULBERSON] in regard to my bill shortly after it was presented to the Senate Interstate Commerce Committee, in which he disposed of that subject with a great deal more facility and confidence than I was able to dispose of it when I commenced to investigate it.

I have been surprised, Mr. President, to see how many constitutional lawyers there are editing newspapers and writing articles for the newspapers. Every day almost I see some great constitutional question disposed of by some man who does not pretend to be a lawyer, but only a newspaper or magazine writer.

Mr. CULBERSON. Will the Senator permit me a question?

Mr. FORAKER. Presently. I want to say a few words in answer to the Senator before I quit, and then I shall yield to any question.

What my bill provides, Mr. President, is not that the courts shall make a rate. I took particular pains when speaking here a week or ten days ago to say that the court—I agree with the Senator in that—has no power to make rates; the court can exercise only judicial power; and the making of rates for the future is a legislative act; but it is a judicial function to make inquiry to ascertain whether or not a railroad is charging an unlawful rate, and if it be charging an unlawful rate it is a judicial power to restrain the collection of anything in excess of that which is lawful. It does not make any difference that the court has to hear witnesses and inquire and ascertain what is lawful instead of turning to the statute and reading the figures written down there to express what the lawful rate shall be. The court, in the case the Senator suggests, would simply ascertain, upon complaint being made, what is the lawful rate fixed by the statute. There is a lawful rate fixed for every railroad in this country by a statute now in force, and a statute that has been in force ever since the interstate-commerce act was enacted in 1887, just as there was before, according to the rule of the common law, which is now a statutory provision, however, declaratory of the rule of the common law, that no railroad shall be allowed to charge in excess of what is reasonable and just, and anything in excess of what is reasonable and just shall be deemed unreasonable and unlawful. That fixes a lawful rate. The courts have held, whenever they have had occasion, that that provision fixed a lawful rate. When somebody complains to a court of equity and says, "I am a shipper; I am shipping every day; I am charged excessive rates, and I should not be required to go into court to sue in an action at law to recover damages; to avoid a multiplicity of suits I come into a court of equity. If I am charged a rate in excess of the lawful rate prescribed by statute, the court has a right, and I ask it, to inquire what is a lawful rate." If it had been written down in some statute the court could turn to and read—I mean if it had been written down in so many figures there would be no trouble—the case would be easy and clear—but having been written down simply by the prescription of a standard, the court must make inquiry. That does not change the nature of the case; that has been a judicial function ever since the common law was administered. A similar question has

arisen from almost every exercise of the police power to make inquiry into and determine what is reasonable; and when it determines what is reasonable as to a rate it determines what is the lawful rate.

Applying that proposition to rates, therefore, when the court restrains all in excess of the lawful rate, the court does not make a rate; the rate is already made by the statute; and the court simply gives effect to the rate which the statute has prescribed as the lawful rate.

Mr. CULBERSON. Mr. President, I do not know how much of the Senator's remarks are intended to apply to me in what he said with reference to constitutional lawyers and constitutional writers, but—

Mr. FORAKER. The Senator will certainly allow me to say that I would not, even in the most indirect way, reflect upon the Senator, or criticise him as a lawyer or as a gentleman. We all acknowledge his very distinguished ability.

Mr. CULBERSON. I was simply going to say, Mr. President, that, so far as the constitutional question is concerned, I am perfectly willing that its determination, so far as the Senate is concerned, shall await a full discussion on this floor.

Passing from the constitutional question, Mr. President, and going back to the point which I had in view at the outset—that is to say, whether or not there are any rebates being granted now, and whether the law on the subject of rebates is sufficient, I want to call the attention of the Senator—not that it is necessary to do so, but in order to get this provision in the RECORD—to this clause in the Elkins law:

In all convictions occurring after the passage of this act for offenses under said acts to regulate commerce, whether committed before or after the passage of this act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished.

Now, I will ask the Senator, in the first place, if he believes that the original law ought to have been modified to that extent; and, second, whether or not it is his opinion that a repeal of this part of the Elkins law and the reinstatement of the original law for punishment by imprisonment would not add to the efficacy of the law against rebates?

Mr. FORAKER. Mr. President, I should have no objection to that amendment being made, if the Senator from Texas and other Senators, after consideration, think it is a proper amendment. I think the imprisonment clause was dropped out because the law was made to apply by the Elkins Act to corporations, and it would be rather difficult to put a corporation in the penitentiary. So it was thought by some who were on the committee, in their simple-minded view of the matter, that punishment should be the same to all for the same offense. That is all there was of that, except it was also thought that the imprisonment clause stood in the way of an effectual enforcement of the law in the matter of securing evidence.

It was not thought, Mr. President—the Senator may think differently, and we shall be glad to hear from him on that at the proper time—it was not thought by the committee, nor by the Senate at that time, that we could for the same offense have

different punishments, and inasmuch as we were undertaking to reach the corporation itself, as well as the individual, the imprisonment feature was dropped out. But I personally had nothing to do with that part of the Elkins law ; I think every member of the committee will sustain me in that statement. I simply adopted the views of others in that respect.

Mr. HALE. Mr. President, I think I must call for the regular order.

The VICE-PRESIDENT. The Calendar, under Rule VIII, is in order. The first bill on the Calendar will be stated.

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# Railway Rate Legislation.

Views of  
JUDGE WM. H. WEST,  
of  
Bellefontaine, Ohio

UPON THE CONSTITUTIONAL  
AND LEGAL QUESTIONS INVOLVED.

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BELLEFONTAINE, OHIO, *January 26, 1906.*

HON. J. B. FORAKER,  
Washington, D. C.

MY DEAR SENATOR:

Your favor of Monday received and contents noted. You can dispose of the papers sent you on the rate question at your discretion. Writing them was undertaken without the slightest view to their printing.

\* \* \* \* \*

The infirmity of two and eighty years and total loss of vision confine me to my house, and have, since September. Without mental employment, this confinement is intolerable imprisonment. Until Congress convened in December, I had no thought but that the power to prescribe rates might be vested in the Commerce Commission, as I had given no attention to the subject. Noticing that sharp differences obtained between distinguished members of Congress and others touching this power, I determined, for my own satisfaction, to look into and study the question from the standpoint of the Constitution alone.

\* \* \* \* \*

The result of that inquiry was the first series of papers sent you, which were written at odd hours as I could conscript a reader and typewriter. What I had written having appeared in print, I should have been exceedingly mortified to find my conclusions at variance with and unsupported by the adjudicated cases. I thereupon determined to look into the cases, and, to aid in the in-

quiry, I wrote to our Representative, Hon. R. D. Cole, to send me copies of the Rate Bills pending before Congress, which he did. The result of this inquiry is the second series of papers sent you. The reasons given therein and cases cited establish beyond peradventure that Congress is without authority to delegate to the Commission power to prescribe the rate charges of common carriers. You can, I repeat, dispose of them at your discretion, if you think they may contribute in any degree to the settlement of the vexed question.

My doctrine is, that if there be two methods of remedying the same mischief, one in harmony with the Constitution, the other violative thereof or of questionable constitutionality, that one should be adopted which preserves the Constitution intact. The advocates of rate-making by the Commission appear to act on the principle that the end justifies the means, and that whatever public opinion demands shall be granted regardless of the Constitution.

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It has come to pass that every one who dares to maintain or defend the constitutional rights of common carriers by rail is denounced as the tool or corrupt hireling of the railway lobby. I think the oath which every member of Congress has recorded above to support the Constitution, is as sacred as that of the Chief Magistrate; and if I had a seat in that body I would declare my convictions and act upon them regardless of consequences. If the Senate yields to public clamor, then Goodbye constitutional government.

Yours very truly,

W. H. WEST.

## Congress and Interstate Commerce.

It is intended in this paper to restate the reasons, with others, for the opinion expressed in a former paper, that the propositions here following must be determined in the negative, citing authorities not consulted before that paper was prepared.

### Propositions.

Does the power of Congress "to regulate commerce with foreign nations, and among the several States" include the power to prescribe maximum or other rates of compensation which common carriers shall charge for their services in transporting it?

Assuming that it does, can Congress delegate to "a tribunal inferior to the Supreme Court," or to an administrative board the power to prescribe such rates and to compel their observance?

Only commercial intercourse with foreign nations and between the several States is taken cognizance of by the Federal Constitution. Only that commercial intercourse conducted by common carriers for hire is involved in and will be considered in this discussion. As a clear apprehension of what are the subjects of commercial intertransportation, what the subjects of commercial regulation, the distinction between them, of what are the objects of such regulations, and the source of the power in Congress to prescribe them, is essential to a correct understanding and the intelligent application of the adjudged cases cited, they are here stated in their order.

## The Subjects of Commercial Intertransportation.

I. The subjects of international commerce are passengers and freights *in transit* between the United States and foreign nations: The subjects of interstate commerce are passengers and freights *in transit* between the States and Territories of the United States. Until the voyage or journey of the passenger terminates, or the freight has reached its destination, and they respectively become commingled with the general mass of people and property, they are equally within and under the protection of Federal authority. As said by Chief Justice Marshall in *Gibbons vs. Ogden*, 9 Wheaton, 215, "No clear distinction is perceived between the power to regulate vessels in transporting *men for hire* and *property for hire*." Also by Mr. Justice McLean, in *Smith vs. Turner*, 7 How., 405, "When the merchandise is taken from the ship, and becomes mingled with the property of the people of the State, like other property, it is subject to the local law; but until this shall take place, the merchandise is an import, and is not subject to the taxing power of the State, and the same rule applies to passengers. When they leave the ship, and mingle with the citizens of the State, they become subject to its laws." So by Mr. Justice Field, in *Gloucester Ferry Co. vs. Pennsylvania*, 114 U. S., 203, "Transportation implies the taking up of persons or property at some point and putting them down at another. A tax, therefore, upon such receiving and landing of passengers and freight is a tax upon their transportation; that is, upon the commerce between the two States involved in such transportation. \* \* \* Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property." These cases and many others of like effect, make it manifest that the subjects of interstate commerce are identical in character and kind with the subjects of international



commerce, namely, persons and property *in transit*; and hence, that the powers which Congress may constitutionally exercise in respect to interstate commerce are identical with the powers which it may constitutionally exercise respecting international commerce, or at least ought to be, no more, no less, nor different; and it will later appear that such is the case.

### Subjects of Commercial Regulation.

The subjects of commercial regulation between the United States and foreign nations and between the States and Territories of the United States, are not the persons and property transported, but the instrumentalities, vehicles, appliances, agencies, equipments, facilities, and conveniences used or employed by the carrier in furthering the persons and property by him transported to their ultimate destination; and for their protection, safety, or comfort, while in transit. These, in maritime commerce, extend to and embrace the vessels employed, the officers and crews conducting such vessels, the places or conveniences for embarkation and landing, the appliances and equipments for the protection, safety and comfort of passengers, and the protection and safety of property on board, including signals and rules to be observed by the carrier or his employees and servants in navigation, and others of like character and purpose; and, in land transportation, extend to and embrace instrumentalities and vehicles used or employed therein, including railways and their appliances and equipments, conductors, brakemen, switchmen, engineers, firemen, train dispatchers, cars, locomotives, the places for the receiving and discharge of passengers or freight, and all other kinds of instrumentalities, agencies, or facilities used or employed in or in connection with such transportation until the voyage is terminated or the place of destination reached. As said in *Gibbons vs. Ogden*, 9

Wheaton, 229, "Commerce, in its simplest signification, means an exchange of goods; but, in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange, become commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulation;" also by Mr. Justice McLean, in *Smith vs. Turner*, 7 How., 408, "The officers and crew of the vessel are as much the instruments of commerce as the ship;" so by Mr. Justice Curtis, in *Cooley vs. The Board of Wardens*, 12 How., 316, "The power to regulate navigation is the power to prescribe rules in conformity with which navigation must be carried on. It extends to the persons who conduct it, as well as to the instruments used;" so by Mr. Justice Field, in *Gloucester Ferry Co. vs. Pennsylvania*, 114 U. S., 203, "Commerce among the State consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities. The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress, is the power to prescribe *the rules by which it shall be governed*. \* \* \*

The power embraces within its control all the instrumentalities by which that commerce may be carried on. \* \* \*

The subjects, therefore, upon which the power may be exerted are of infinite variety. \* \* \*

Necessarily that power alone [Congress] can prescribe regulations which are to govern the whole country, and it needs no argument to show that the commerce with foreign nations and between the States, which consists in the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation;" and by Mr. Justice Lamar, in *Norfolk & W. R. Co., vs. Pennsylvania*, 136 U. S., 960 (Nat'l Reporter System), "Whenever a commodity has begun to move as an article of trade from one State to

another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. *To the extent in which each agency acts in that transaction, it is subject to the regulation of Congress.*" These cases and others of like import make it clear that the subjects of commercial regulation by Congress in respect of interstate commerce, are identical in kind and character with the subjects of commercial regulation by Congress in respect of international commerce, and hence, that the powers which it may constitutionally exercise in the regulation of either are identical with the powers it may exercise in the regulation of the other, no greater, no less, nor different, as will later appear.

### **Objects of Commercial Regulation.**

It requires the citation of no adjudged cases to make it obvious that the objects and purposes sought to be subserved by the regulation of interstate commerce are identical with the objects and purposes sought to be subserved by the regulation of international commerce. These are, in respect of each and both, the safety and comfort of the persons and animals transported, the safety of the property carried, and the exemption of each and both from interference or the levying of tribute or other burdens by State legislation while in transit.

### **Common Source of the Power to Regulate.**

Art. I, Sec. 8, of the Constitution ordains that Congress shall have power :

1. "To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense

and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

2. "To borrow money on the credit of the United States."

3. "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

18. "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof."

In *Gibbons vs. Ogden*, 9 Wheaton, 194, Chief Justice Marshall, after citing Clause 3, of Sec. 8, thus speaks: "To what commerce does this power extend? The Constitution informs us, to commerce 'with foreign nations, and among the several States, and with the Indian tribes.'

"It has, we believe, been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend. It has been truly said that commerce, as the word is used in the Constitution, is *a unit*, every part of which is indicated by the term.

"If this be the admitted meaning of the word, in its application to foreign nations, *it must carry the same meaning throughout the sentence*, and remain a unit, unless there be some plain intelligible cause which alters it.

"The subject to which the power is next applied is to commerce 'among the several States.' The word 'among' means intermingled with. A thing which is among others is intermingled with them. Commerce among the States cannot stop at the external boundary line of each State, but may be introduced into the interior. \* \* \* Comprehensive as

the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. \* \* \* The genius and character of the whole government seem to be that its action is to be applied *to all the external concerns of the nation*, and to those *internal concerns which affect the States generally*; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government. The completely internal commerce of a State, then, may be considered as reserved for the State itself. \* \* \*

"We are now arrived at the inquiry—what is this power?

"It is the power to *regulate*; that is, *to prescribe the rule by which commerce is to be governed*. This power, like all others vested in Congress, *is complete in itself*, may be exercised to the utmost extent, *and acknowledges no limitations other than are prescribed in the Constitution*. \* \* \* If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government, having in its Constitution *the same restrictions* on the exercise of the power as are found in the Constitution of the United States." \* \* \*

Again, on page 201, he says: "We must first determine whether the act of laying 'duties or imposts on imports or exports' is considered in the Constitution as a branch of the taxing power, or of the power to regulate commerce. We think it very clear that it is considered as a branch of the taxing power. It is so treated in the first clause of the 8th section: 'Congress shall have power to lay and collect taxes, duties, imposts, and excises;' and before commerce is mentioned, the rule by which the exercise of this power must be



governed is declared. It is that all duties, imposts and excises shall be uniform. In a separate clause of the enumeration the power to regulate commerce is given as being entirely distinct from the right to levy taxes and imposts, and as being a *new power* not before conferred. The Constitution, then, considers these powers *as substantive and distinct from each other*; and so places them in the enumeration it contains." So by Mr. Justice Johnson, concurring at page 228, "Another view of the subject leads directly to the same conclusion. Power to regulate foreign commerce is given *in the same words, and in the same breath*, as it were, with that over the commerce of the States. But the power to regulate foreign commerce is necessarily exclusive. The States are unknown to foreign nations; their sovereignty exists only with relation to each other and the general government. Whatever regulations foreign commerce should be subjected to in the ports of the Union, the general government would be held responsible for them; and all other regulations but those which Congress had imposed would be regarded by foreign nations as trespasses and violations of national faith and comity. But the *language* which grants the power as to one description of commerce *grants it as to all*; and, in fact, if ever the exercise of a right or acquiescence in a construction could be inferred from contemporaneous and continued assent, it is that of the exclusive effect of this grant."

These opinions and many others not necessary to cite demonstrate that the powers delegated to Congress for, and which it may constitutionally exercise in the regulation of international commerce, are identical with the powers delegated to Congress for, and which it may constitutionally exercise in the regulation of interstate commerce, no greater, no less, nor different.

## The Power of Congress Exclusive.

A particular or distinct and substantive power, the whole and every part of which is delegated by the Constitution to a designated department or officer of the government, cannot be redelegated to nor exercised by a State, nor be devolved upon nor exercised by any other department or officer of the government in any event or for any purpose. The power "to regulate commerce with foreign nations, and among the several States," is a separate, distinct and substantive power, the whole and every part of which is by the Constitution unconditionally and without reservation or limitation delegated to Congress, and hence cannot be redelegated to nor exercised by a State, nor be devolved on nor exercised by any other department or officer of the government in any event or for any purpose. This was held *in re* Hayburn's Case, 2 Dall., 409; also by Chief Justice Taney, in *United States vs. Ferreira*, 13 How., 44, 45, and in *U. S. vs. Todd*, appended as a note to the opinion of the Chief Justice in *Ferreira's Case*, at page 52. Chief Justice Marshall, in *Gibbons vs. Ogden*, 9 Wheaton, 209, thus speaks: "It has been contended by the counsel for the appellant that, as the word 'regulate' implies in its nature full power over the thing to be regulated it excludes, necessarily, the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were, as well as to those which are altered. It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that on which it has operated. There is great force in this argument, *and the court is not satisfied that it has been refuted.*"

So by Mr. Justice Field, in *Welton vs. Missouri*, 91 U. S., 280, "Where the subject to which the power applies is national in its character, or of such a nature as to admit of uni-

formity of regulation, the power is exclusive of all State authority. It will not be denied that that portion of commerce with foreign countries and between the States which consists in the transportation and exchange of commodities is of national importance and admits and requires uniformity of regulation. The very object of investing this power in the General Government was to insure this uniformity against discriminating State legislation."

In *Field vs. Clark*, 143 U. S., 649, Mr. Justice Harlan, speaking for the Court, says: "That Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution. The Act of October 1, 1890, in the particular under consideration is not inconsistent with that principle. It does not, in any real sense, invest the President with the power of legislation." Chief Justice Fuller and Mr. Justice Lamar, in a dissenting opinion, say: "The Chief Justice and myself concur in the judgment just announced. But the proposition maintained in the opinion, that the third section, known as the 'Reciprocity Provision,' is valid and constitutional legislation does not command our assent. \* \* \* We think that this particular provision is repugnant to the first section of the first article of the Constitution of the United States, which provides that 'all legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and a house of representatives.' That no part of this legislative power can be delegated by Congress to any other department of the government, *executive or judicial*, is an axiom in constitutional law and is universally recognized as a principle essential to the integrity and maintenance of the system of government ordained by the Constitution. The legislative power must remain in the organ where it is lodged by that instrument."

### Summary Restatement.

The preceding authorities establish these propositions:

1. The subjects of interstate commerce in transit are identical in character and kind with the subjects of international commerce in transit; they are the persons and property transported.

2. The subjects of interstate commerce in transit, the power to regulate which is delegated to Congress, are identical in character and kind with the subjects of international commerce in transit, the power to regulate which is delegated to Congress. They are the instrumentalities, vehicles, appliances, agencies, equipments, facilities, means, and conveniences used or employed by the carrier in furthering the persons and property by him transported to their ultimate destination, including signals and rules to be observed by him or his employees *en route*.

3. The objects sought to be subserved by the regulation of interstate commerce in transit are identical with the objects sought to be subserved by the regulation of international commerce in transit, namely, the safety and comfort of persons and live freights, and the safety of the property transported.

4. The powers delegated to Congress for, and which it may constitutionally exercise in, the regulation of interstate commerce in transit, are identical with the powers delegated to that department for, and which it may constitutionally exercise in the regulation of international commerce in transit.

5. The power delegated to Congress to regulate commerce with foreign nations and among the several States is exclusive and cannot be redelegated to nor exercised by a State, nor be devolved upon or exercised by any other department or officer of the government in any event or for any purpose.

## Argument.

II. In one and the same sentence, in the same words, "in the same breath, as it were," equal and the same power is delegated Congress to regulate *both* commerce with foreign nations and among the several States. "It has, we believe, been universally admitted," says Chief Justice Marshall (*supra*), "that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend. It has been truly said that commerce, as the word is used in the Constitution, is a *unit*, every part of which is indicated by the term. If this be the admitted meaning of the word, in its application to foreign nations, *it must carry the same meaning throughout the sentence*," that is, it must carry the same meaning and embrace the same subjects and objects of regulation in its application to interstate commerce which it carries and embraces in its application to international commerce. It necessarily follows, then, that if the power *is not* delegated to Congress to prescribe the compensation which carriers shall charge for their services in transporting international commerce, power *is not* delegated Congress to prescribe the compensation which carriers shall charge for their services in transporting interstate commerce.

Thus, divested of all collateral matters calculated to confuse the issue, the simple question is presented: Does the Constitution delegate to Congress the power to prescribe the compensation which common carriers of international commerce shall charge for their services in transporting it?

The original Confederacy was a League of sovereign States. In disposing of their powers on reconstructing the Union, they delegated to the new government all those of a character international in their relations to and intercourse with outside nations, all those of a character international



in their relations to and intercourse with each other, and all those necessary to enable the central government, as supreme arbiter, to guarantee to each a government republican in form, the enjoyment by the citizens of each State of the privileges and immunities of citizens in the several States, and the observance by each State of its obligations entered into by the adoption of the Constitution; renounced other powers not delegated to the government and reserved the residuum. Under the tenth amendment to the Constitution, which ordains that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." It was held by Mr. Justice McLean, speaking for the Court, in *Smith vs. Turner*, 7 How., 399, that "federal authority is void when exercised beyond its constitutional limits," and that "the States cannot be held to have parted with any of the attributes of sovereignty which are not plainly vested in the Federal Government either expressly or by *necessary* implication." It was contended in *Gibbons vs. Ogden*, 9 Wheaton, 187, that, as the States were severally sovereign when the Constitution was framed, that instrument must be strictly construed, and the States be held not to have parted with any of their powers not expressly delegated. Replying to this, Chief Justice Marshall, for the Court, said: "Reference has been made to the political situation of these States, anterior to its formation. It has been said that they were sovereign, were completely independent, and were connected with each other only by a league. This is true. But, when these allied sovereigns converted their league into a government, when they converted their congress of ambassadors, deputed to deliberate on their common concerns, and to recommend measures of general utility, into a legislature empowered to enact laws on the most interesting subjects, the whole character in which the States appear underwent a

change, the extent of which must be determined by a fair consideration of the instrument by which that change was effected. This instrument contains an enumeration of powers expressly granted by the people to their government. It has been said that these powers ought to be construed strictly. But why ought they to be so construed? Is there one sentence in the Constitution which gives countenance to this rule? In the last of the enumerated powers, that which grants, expressly, the means for carrying all others into execution, Congress is authorized 'to make all laws which shall be *necessary and proper*' for the purpose. But this limitation on the means which may be used is not extended to the powers which are conferred, nor is there one sentence in the Constitution which has been pointed out by the gentlemen of the bar, or which we have been able to discern, that prescribes this rule. We do not, therefore, think ourselves justified in adopting it. What do gentlemen mean by a strict construction? If they contend only against that enlarged construction, which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the Constitution, would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of the instrument; for that narrow construction, which would cripple the government and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent; then we cannot perceive the propriety of this strict construction, nor adopt it as the rule by which the Constitution is to be expounded." The limitation referred to is Clause 18, of Section 8, which ordains that "The Congress shall have power to make all laws which shall be *necessary and proper* for carrying into

execution the foregoing powers," etc. That to regulate commerce with foreign nations and among the several States, is among "the foregoing powers" referred to, being Clause 3, of Section 8.

It is not claimed by any, nor can it seriously be, that the power to prescribe the compensation which carriers shall charge for transporting international commerce is delegated to Congress in express terms. Is or can its delegation be implied? It cannot, unless the power to prescribe the carrier's compensation is "necessary or proper to carry into execution" the "substantive and independent power" expressly delegated to regulate commerce with foreign nations. Is the power to prescribe this compensation either necessary or appropriate to the regulation of such commerce? His compensation is not commerce nor a subject of commercial transportation, for it is not a person nor a thing transported by him. It is not a subject of commercial regulation, for it is not a vessel, nor a vehicle, nor an agency, nor an instrumentality, nor a means, nor a facility, nor a convenience used or employed by the carrier in furthering the person or property by him transported to their destination. It is not an object sought to be subserved by any commercial regulation, for it is neither an appliance to be supplied, nor an equipment to be provided, nor a rule of conduct to be observed by him for the safety or comfort of passengers or living freights, or for the safety of property in transit. Neither the exorbitance nor the reasonableness nor any rate of his compensation can increase, diminish, or avert the perils or discomforts or hazards of the voyage. Hence, the delegation of the power to prescribe the carrier's compensation is not nor can be implied as either necessary or appropriate to, nor can it be applied in the execution of the power to regulate commerce with foreign nations.

This conclusion is confirmed by the fact that during more than a century's existence of the government it never oc-

curred to the earlier statesmen who administered it that the power to prescribe the compensation of carriers for their services in transporting international commerce was either necessary or appropriate for the execution of the power expressly given to regulate it, for among the countless rules and regulations by them from time to time provided therefor, that of prescribing the compensation of carriers does not appear.

What is true of commerce with foreign nations is equally true of commerce among the several States. "It has been truly said," observed Chief Justice Marshall, in *Gibbons vs. Ogden* (*supra*), "that commerce, as the word is used in the Constitution, is a *unit*, every part of which is indicated by the term. If this be the admitted meaning of the word, in its application to foreign nations, *it must carry the same meaning throughout the sentence*;" that is, it must carry the same meaning and embrace the same subjects and objects of regulation in its application to interstate commerce which it carries and embraces in its application to international commerce. Hence, as the delegation to Congress of power to prescribe the compensation of carriers for their services in transporting international commerce is not nor can be implied as necessary or appropriate to the execution of the power expressly given to regulate it, the delegation to Congress of power to prescribe the compensation of carriers for their services in transporting interstate commerce is not nor can be implied as necessary or appropriate to the execution of the power expressly given to regulate it. The compensation of an interstate carrier is not commerce any more than is the compensation of an international carrier, nor is it a subject of interstate transportation, for it is neither a person nor a thing transported by him. It is not a subject of commercial regulation, for it is not a road wagon, nor a stage coach, nor a watercraft, nor a railway or a railway train, nor

a vehicle of any kind, nor an agency, nor an instrumentality, nor a means, nor a facility, nor a convenience used or employed by the carrier in furthering the subjects of commerce, the persons and property by him transported to their destination. It is not an object sought to be subserved by any commercial regulation, for it is not an appliance to be employed, nor an equipment to be provided, nor a rule of conduct to be observed by the carrier for the safety or comfort of the persons or property in transit. Neither its exorbitance, nor its reasonableness, nor the gratuitous rendering of the service can increase or diminish or avert the perils, or discomforts or hazards of transportation. Hence, the delegation to Congress of power to prescribe the compensation of interstate carriers cannot be implied as either necessary or proper for carrying into execution the substantive, independent, and expressly delegated power to regulate commerce among the several States.

It has been judicially determined by the U. S. Supreme Court that the legislatures of the several States have power to prescribe the compensation which the carriers of internal State commerce shall charge for their services; from which it is assumed that Congress is empowered to prescribe the compensation of carriers for transporting interstate commerce. This assumption is not warranted. The question is not whether among the powers reserved by the Constitution to the several States is that of prescribing the compensation of the carriers of internal State commerce, but whether the States have delegated to Congress, either expressly or by necessary implication, the power to prescribe such compensation for the carriers of international or interstate commerce. It does not follow that because a power has been reserved to and may be exercised by the several States over a particular subject, the like power has been delegated to and may be exercised by Congress over a kindred subject. The one is in no degree dependent on the other. The powers which Congress may



exercise are derived from the Federal Constitution, not from the constitutions of the several States, and a power not expressly or by necessary implication delegated to Congress by the Federal Constitution cannot be exercised by it over any subject for any purpose.

### **Congress Cannot Delegate Its Power.**

But assuming that Congress is empowered to prescribe the future rates of compensation which interstate and international carriers shall charge, can it delegate the power to "a tribunal inferior to the Supreme Court," or to "an administrative Board or Commission?" The character of an official tribunal is determined by the nature of the powers which it may constitutionally exercise or functions perform, and not by the name it may be given. Ascertaining and determining the reasonableness or unreasonableness of existing rates of compensation charged by such carriers is the exercise of judicial power. Prescribing future rates of compensation which such carriers shall charge is the exercise of legislative power. In *Interstate Commerce Commission vs. Cincinnati N. O. & T. P. Ry. Co.*, 167 U. S., Mr. Justice Brewer, on page 505, said: "The power to prescribe a tariff of rates for carriage by a common carrier is a *legislative* and not an administrative or judicial function," and, in the syllabus, "The powers of the Interstate Commerce Commission are judicial and administrative, but not legislative."

Neither department of the government can exercise a power not delegated to it by the Constitution. By that instrument it is ordained that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." No authority is granted to that body in or by any clause of the Constitution to sub-delegate or sublet for any

purpose any part of the legislative power so exclusively vested in it, either to a State, or to any other department or officer of the government, or to any person or tribunal. Hence, no power having been granted Congress by the Constitution to sub-delegate or sublet to another any part of the legislative power so exclusively vested in it, any exercise by another of such undelegated power is and of necessity must be void. *Smith vs. Turner*, 7 How. (*supra*). It cannot sublet legislative power to the Interstate Commerce Commission for this further reason: That Commission is a judicial tribunal and its Commissioners are judicial officers of the government, and Congress cannot delegate legislative power to any other department or officer of the government, either executive or judicial. *Field vs. Clark*, 143 U. S., 649 (*supra*). Also *in re Hayburn's Case*, 2 Dall., 409, and *U. S. vs. Ferreira*, 13 How., 44, 45 (*supra*). So in *Kilbourn vs. Thompson*, 103 U. S., 190, it was said by Mr. Justice Miller, Chief Justice Waite concurring: "It is believed to be one of the chief merits of the American system of written constitutional law that all the powers intrusted to government, whether State or national, are divided into three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. \* \* \*

In the main that instrument, the model on which are constructed the funda-

mental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another."

"It may be said that these are truisms which need no repetition here to give them force. But while the experience of almost a century has in general shown a wise and commendable forbearance in each of these branches from encroachments upon the others, it is not to be denied that such attempts have been made, and it is believed not always without success. The increase in the number of States, in their population and wealth, and in the amount of power, if not in its nature to be exercised by the Federal Government, presents powerful and growing temptations to those to whom that exercise is intrusted to overstep the just boundaries of their own department and enter upon the domain of one of the others or to assume powers not intrusted to either of them."

By the foregoing and many other adjudications of the U. S. Supreme Court, the familiar citation from *Cooley's Constitutional Limitations*, page 103, 7th Ed., is abundantly justified. That eminent author and jurist says: "One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other

body for those to which alone the people have seen fit to confide this sovereign trust."

From the foregoing the conclusion is compelled:

1. The power of Congress to regulate commerce with foreign nations, and among the several States, does not include power to prescribe the compensation of carriers for their services in transporting either international or interstate commerce.

2. If it did, no authority having been granted Congress to sublet to another any part of the legislative power exclusively vested in it, that body cannot sub-delegate the power to any other department, officer, tribunal, or official Board.

### Compensation for Use and Services.

III. The conclusion has this further support. Wharves, locks in improved rivers, canals, bridges, etc., constructed and maintained under grant of authority from the State and used in connection with the transit of commerce, are quasi public institutions in the same sense that railways constructed and maintained by like authority and used in the transit of commerce, are quasi public institutions. But compensation charged as tolls, or wharfage, for the use of such instrumentalities in connection with the transit of international or interstate commerce, has never been recognized or dealt with by Congress as a subject of commercial regulation. In *Smith vs. Turner*, 7 How. 403, it was contended that Congress, "under the power to regulate commerce among the several States, can impose a tax for the use of canals, railroads, turnpike roads, and bridges constructed by a State, or its citizens." Replying to this, Mr. Justice McLean said: "I answer, that Congress has no such power. The United States cannot use any one of these

works without paying the customary tolls. The tolls are imposed, not as a tax, in the ordinary sense of that term, but as compensation for the increased facility afforded by the improvement."

The Mississippi, Ohio, and Illinois rivers are public highways. Under authority from the State of Iowa, the city of Keokuk constructed and maintained a wharf on the Mississippi, charging wharfage for its use. In *Packet Co. vs. Keokuk*, 95 U. S., 80, Mr. Justice Strong, speaking for the Court, thus said: "The question presented by the record of this case is, whether a municipal corporation of a State, having by the law of its organization an *exclusive right* to make wharves, collect wharfage, and regulate rates, can, consistently with the Constitution of the United States, charge and collect wharfage proportioned to the tonnage of the vessels from the owners of enrolled and licensed steamboats mooring and landing at the wharves constructed on the banks of a navigable river. The city of Keokuk is such a corporation, existing by virtue of a special charter granted by the legislature of Iowa. \* \* \* A charge for services rendered or for conveniences provided is in no sense a tax or a duty." So under authority from the State of Missouri, the city of St. Louis constructed and maintained a wharf on the Mississippi, charging wharfage for its use. In *Packet Co. vs. St. Louis*, 100 U. S. 423, "Action was instituted to compel the repayment of the sums collected" (from the Packet Company) "upon the grounds," among others, "that the ordinance in question was in conflict \* \* \* with the clause conferring upon Congress the right to regulate commerce with foreign nations, and among the several States." In determining the question, Mr. Justice Harlan, speaking for the Court, said: "A municipal corporation, owning improved wharves and other artificial means which it maintains, at its own cost, for



the benefit of those engaged in commerce upon the public navigable waters of the United States, is not prohibited by the Constitution of the United States from charging and collecting from parties using its wharves and facilities such reasonable fees as will fairly remunerate it for the use of the property." To the same effect is *Transportation Co. vs. Parkersburg*, 107 U. S. 691.

The legislature of Illinois authorized the improvement of the Illinois river by the construction of dams and locks; created a Board of Canal Commissioners, "and invested it with authority to superintend the construction of the locks and dams, to control and manage them after their construction, and to prescribe reasonable rates of toll for the passage of vessels through the locks. \* \* \* The Commissioners prescribed rates of toll for the passage of vessels through the locks, the rates being fixed per ton, according to the tonnage measurement of the vessels and the amount of freight carried." In *Huse vs. Glover*, 119 U. S., 544, the Complainant, who was engaged in both interstate and international commerce on the river, instituted proceedings to enjoin the Commissioners from levying and collecting tolls for the passage through the locks. In determining the case, Mr. Justice Field, for the Court, said: "The exaction of tolls for the passage through the locks is as *compensation* for the use of the artificial facilities constructed, not as an impost upon the navigation of the stream. \* \* \* For outlays caused by such works the State may exact reasonable tolls. They are like charges for the use of wharves and docks constructed to facilitate the landing of persons and freight, and the taking them on board, or for the repair of vessels. The State is interested in the domestic as well as in the interstate and foreign commerce conducted on the Illinois river, and to increase its facilities, and thus augment its growth, it has full

power. It is only when, in the judgment of Congress, its action is deemed to encroach upon the navigation of the river as a means of interstate and foreign commerce, that that body may interfere and control or supersede it. If, in the opinion of the State, greater benefit would result to her commerce by the improvements made, than by leaving the river in its natural state—and on that point the State must necessarily determine for itself—it may authorize them, although increased inconvenience and expense may thereby result to the business of individuals. The private inconvenience must yield to the public good. *The opening of a new highway, or the improvement of an old one, the building of a railroad, and many other works, in which the public is interested, may materially diminish business in certain quarters and increase it in others; yet, for the loss resulting, the sufferers have no legal ground of complaint. How the highways of a State, whether on land or by water, shall be best improved for the public good is a matter for State determination, subject always to the right of Congress to interpose in the cases mentioned.*” Citing *Packet Co. vs. Keokuk*, 95 U. S. 80, 84, and quoting therefrom, the opinion proceeds: “The court held,” (in that case), “a charge for *services rendered*, or for *conveniences provided*, is in no sense a tax or a duty.”

The preceding cases, beginning with that of *Packet Co. vs. Keokuk*, 95 U. S., were all decided before the Interstate Commerce Commission was created, and while Chief Justice Waite was still on the bench. From them the conclusion is compelled, that compensation for services rendered or the use of artificial facilities furnished, was never regarded by Congress as a subject of commercial regulation, or dealt with as such by the legislative department of the government. Compensation charged for services rendered by the proprietors of a railway is not distinguishable in

principle from compensation for services rendered in the passage of vessels through the locks of the Illinois river.

### Unreasonable and Discriminating Rates.

IV. Is the government, then, without power to prevent carriers by railway from charging exorbitant, unreasonable, or discriminating rates of compensation for their services in transporting international or interstate commerce? Not at all. On the contrary its power is plenary, and the remedy it may administer is ample, effectual, and prompt. The common law condemned unreasonable and discriminating charges by common carriers for their services, and furnished a complete remedy therefor, before the Federal Constitution was framed or its government established. For unlawful contracts, combinations, and conspiracies in restraint of commerce and competition, the common law furnishes no remedy; but for unreasonable and discriminating charges by carriers, its remedy is complete. In *Transportation Co. vs. Parkersburg*, 107 U. S. 699, Mr. Justice Bradley, for the Court, said: "It" (the prohibition of tonnage duties) "has nothing to do with wharfage, which is a charge against a vessel for using or lying at a wharf or landing. The one is imposed by the government, the other by the owner of the wharf or landing. The one is a commercial regulation, dictated by the general policy of the country upon consideration having reference to its commerce or revenue; the other is a rent charged by the owner of the property for its temporary use. It is obvious that since a wharf is property, and wharfage is a charge or rent for its temporary use, the question whether the owner derives more or less revenue from it, or whether more or less than the cost of building and maintaining it, or what disposition he makes of such revenue, can in no way concern those who make use of the wharf and are required to pay

the regular charges therefor; *provided, always, that the charges are reasonable and not exorbitant;*" and, at page 695, "When the question is one of reasonable or unreasonable wharfage, we know what to do with it. It is a question known to the laws; and the modes of redress for unreasonable wharfage are fixed and settled." The same rule applies to unreasonable and discriminating charges by common carriers, on which point the decisions are many and uniform.

In *Reagan vs. Farmers' Loan & Trust Co.* 154 U. S. 1054, (Nat'l. Reporter System), Mr. Justice Brewer, for the Court, said: "It is doubtless true, as a general proposition, that the formation of a tariff of charges for the transportation by a common carrier of persons or property, is a legislative or administrative, rather than a judicial, function. Yet it has always been recognized that, if a carrier attempted to charge a shipper an unreasonable sum, the courts had jurisdiction to inquire into that matter, and to award to the shipper any amount exacted from him in excess of a reasonable rate, and also, in a reverse case, to render judgment in favor of the carrier for the amount found to be a reasonable charge. The province of the courts is not changed, nor the limit of judicial inquiry altered, because the legislature, instead of the carrier, prescribes the rates. \* \* \* The question of the reasonableness of a rate of charge for transportation by a railroad company, involving, as it does, the element of reasonableness, both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring the process of law for its determination."

A railroad company has no right to discriminate in its freight charges in favor of a shipper, and, if it does, it is liable in damages to any person injured by such discrimination.

Hays vs. Pennsylvania, 12 Fed. 309.

Discriminations in the rates of freight charged by a railroad company to shippers, based solely on the amount of freight shipped, without reference to any conditions tending to decrease the cost of transportation, are discriminations in favor of capital, are contrary to sound public policy, violative of that equality of rights guaranteed to every citizen, and a wrong to the disfavored party, for which he is entitled to recover from the railroad company the amount of freight paid by him in excess of the rates accorded by it to his most favored competitor with interest on such sum. *Ib.* 309.

A railroad company cannot bind itself to deliver to a particular stockyard all live stock coming over its line to a certain point, but it is bound to transport over its road and deliver to all stockyards at such point reached by its track or connections, all live stock consigned or which the shippers desire to consign to them, upon the same terms and in the same manner as under like conditions it transports and delivers to their competitors; *and the performance of this duty may be compelled by injunction* at the suit of the proprietor of the stockyard discriminated against. *McCoy vs. Cincinnati, I. St. L. & C. Ry. Co.*, 13 Fed., 3.

Where there are two rival lines of steamboats on a river plying between the same points and carrying freight for hire, both bearing the same relation to a railway company and both seeking its services to forward their freight to the same points of destination, and the company systematically discriminates against one by charging 50 cents a hundred more for freight than the other, it is liable in damages at the suit of the line so discriminated against, *notwithstanding that the higher rate is not an unreasonable charge*. *Samuels vs. Louisville & N. R. Co.*, 31 Fed., 57.



Discriminations by railroad companies in freight rates, based solely on the amount of freight shipped, are unwarrantable. *Kingsley vs. Buffalo, N. Y. & P. Ry Co.*, 37 Fed. 181 (C. C.).

A contract by which a railroad company agrees to charge a rate of not less than \$2.40 per ton to all persons shipping less than 100,000 tons of coal per annum over its road, and to make a rate of \$1.60 per ton to all shippers shipping 100,000 tons or over, is void; the discrimination being so gross as to be contrary to public policy. *Burlington C. R. & N. Ry. Co. (C. C.)*, 31 Fed., 652.

Although there is no limit of rate charges in its charter, a railroad company can only charge a reasonable rate, dependent upon the nature of the goods. *Camblos vs. Philadelphia R. R. Co.*, Fed. Cas., No. 2,331.

The rule forbidding unreasonable freight charges and unjust discriminations being a common law rule, railway companies, by accepting their charters, take them with such implied limitation upon the power granted in general terms to establish their freight rates. *Chicago & A. R. Co. vs. People*, 67 Ill. 11, 16.

A rebate secretly paid by a common carrier to certain shippers being an unjust discrimination against others shipping the same class of goods under the same conditions at the regular rate without rebate, is illegal at common law. *Cook vs. Chicago R. I. & P. Ry. Co.*, 81 Iowa, 551.

While the power of a railroad company to adjust its tariff of charges is one essential to the enjoyment of its franchises, the company, regardless of a statute, will be responsible for its breach of duty as a common carrier in charging exorbitant rates or in making unjust discriminations. *Sloan vs. Pacific R. R. Co.*, 61 Mo. 24.

A carrier at common law cannot discriminate between persons engaged in the express business, but must furnish

equal facilities to all persons on the same terms. *McDuffee vs. Portland & R. R. Co.*, 52 N. H. 430.

When cars loaded with railroad ties are shipped from the same station, the same number of ties being in each car, and nothing appearing by which the cost to the company could be more for shipping one car than another, a discrimination by the company, by which one shipper is charged \$14.00, and all the others \$24.00 per car after a certain date, before which all shipments were \$14.00 per car, is unreasonable, and it is immaterial that the shipper in whose favor the discrimination is made ships more cars than any of the others. *Louisville E. & St. L. Consol. R. Co.*, 132 Ind. 517.

Where a lower rate is given by such corporation (a railway carrier) to a favored shipper, which is intended to give, and necessarily gives, an exclusive monopoly to the favored shipper, affecting the business and destroying the trade of other shippers, the latter have the right to require an equal rate for all under like circumstances. Where such corporation, as a common carrier, in consideration of the fact that a shipper furnished a greater quantity of freights than other shippers during a given term, agree to make a rebate on the published tariff on such freights to the prejudice of the other shippers of like freights under the same circumstances, such a contract is an unlawful discrimination in favor of the larger shipper, tending to create monopoly, destroy competition, injure, if not destroy, the business of smaller operators, contrary to public policy, and will be declared void at the instance of parties injured thereby. Such a contract of discrimination cannot be upheld simply because the favored shipper may furnish for shipment during the year a larger freightage in the aggregate than any other shipper, or more than all others combined. A discrimination resting exclusively on such a basis will not be

sustained. Although a court will ordinarily look to the interest of a common carrier as an element in the case when a contract with him relating to freightage is attempted to be upheld or set aside, such a contract will not be sustained by the courts simply because the business to be done under it is "largely profitable" to him. Where it appeared that the plaintiffs' business was such as to make them frequent shippers, and that a continuous series of shipments was necessary in conducting their business, and that a remedy sought by actions at law would lead to a multiplicity of suits, the court *will intervene by injunction* to prevent a multiplicity of suits, and it is not a prerequisite that the plaintiffs should have first established their rights by an action at law. Where a defendant railroad company is a corporation, consolidated under the statutes of several States, including this State, and its road extends into several States, its action of injurious discrimination committed or threatened in this State to the business of shippers, either here or along the line of its railroad, may be enjoined by the courts of this State. *Scofield vs. Lake Shore & M. S. Ry. Co.*, 43 O. St. 571.

While the common law, as before stated, furnishes no remedy for the evil of unlawful combinations and conspiracies in restraint of trade and competition, commonly called "Trusts," its remedy and that of chancery, as they existed when the government was established, are recognized and applied both by the Federal and the State courts as plenary, ample, and effectual to repress the evils of unreasonable, exorbitant and discriminating charges by common carriers.

### **The Carrier's Right to a Day in Court Indefeasible.**

V. No citizen who intrusts international or interstate commerce to a common carrier, to be transported by what-

ever kind of vehicle, instrumentality, or craft, can, by any commercial regulation prescribed by Congress or otherwise, be denied the right guaranteed to him by the Constitution to have judicial remedy and redress for exorbitant, unreasonable, or discriminating charges by such carrier. *E converso*, no carrier of such commerce can, by any commercial regulation prescribed by Congress or otherwise, be denied the right guaranteed to him by the Constitution to have his day in court, when complained of or proceeded against for charging exorbitant, unreasonable, or discriminating rates for its transportation. Article III. of that instrument thus ordains:

Section 1. "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Section 2. "The judicial power shall extend to all cases, in *law* and *equity*, arising under this Constitution," or "the laws of the United States; \* \* \* to controversies to which the United States shall be a party;" \* \* \* *to controversies "between citizens of different States; \* \* \** and between a State or the citizens thereof, and foreign States, citizens, or subjects."

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Article 1, Section 8, Clause 9: "The Congress shall have power to constitute tribunals inferior to the Supreme Court."

Amendment V. "No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment VII. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Amendment XI. "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

Amendment XIV. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section 8, Clause 18: "The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers *and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.*"

Thus by the supreme organic law of the nation, every shipper, common carrier, or other citizen of any State, having a cause of complaint, *legal or equitable*, arising under a law of the United States, or against a citizen of another State, is guaranteed the constitutional right to have it judicially inquired of and determined by due process of law in some Federal Court of *original jurisdiction*, a sufficient



number of which Congress is under constitutional obligation to ordain and establish; of which right he cannot be lawfully deprived by the United States or any State, nor by any department, tribunal, commission, or official board of either. When the complaint challenges a carrier's charges as unreasonably high or discriminatory, the shipper, or other person prejudiced, is entitled to demand and have such judicial inquiry and determination in the proper Federal Court; when the complaint challenges the rates of charges prescribed by Congress or any inferior tribunal or commission as unreasonably low or confiscatory, it is the constitutional right of the carrier to demand and have such judicial inquiry and determination in such Federal Court.

By the fourteenth amendment, the same indefeasible right is guaranteed to every such person having a cause of complaint, *legal or equitable*, arising under a law of any State. In *Reagan vs. Farmers' Loan & Trust Co.*, 154 U. S. (*supra*), the railway commission of Texas prescribed passenger and freight rates on the International & Great Northern Railroad so unreasonably low as to be practically confiscatory of the property. The plaintiff, a mortgagee, challenged the rates on this ground in the proper Federal Court. The commission denied that the Court had or could acquire jurisdiction of the subject. In disposing of the case, Mr. Justice Brewer, for the Court, at page 1051, (Nat'l Rep. Sys.), said: "Where a suit is brought against defendants, who, claiming to act as officers of the State, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State; such suit, whether brought to recover money or property in the hands of such defendants, unlawfully taken by them in behalf of the State, or for compensation in damages, or, in a proper case, where the remedy at law is inadequate, for an injunction to prevent such wrong and injury, or for a mandamus, in a like case,

to enforce upon the defendant the performance of a plain, legal duty, purely ministerial, is not, within the meaning of the eleventh amendment, an action against the State. \* \* \* Nor ( p. 1052) can it be said in such a case that relief is obtainable only in the courts of the State, for it may be laid down as a general proposition that whenever a citizen of a State can go into the courts of the State to defend his property against the illegal acts of its officers, a citizen of another State may invoke the jurisdiction of the Federal Courts to maintain a like defense. A State cannot tie up a citizen of another State having property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts. Given a case where a suit can be maintained in the courts of the State to protect property rights, a citizen of another State may invoke the jurisdiction of the Federal Courts."

Again (p. 1054) : "The body of rates (prescribed by the Commission) as a whole is challenged by the plaintiff as unreasonable, unjust, and working a destruction of its rights of property. The defendant denies the power of the court to entertain an inquiry into that matter ; insisting that the fixing of rates for carriage by a public carrier is a matter wholly within the power of the legislative department of the government and beyond examination by the courts."

"It is doubtless true, as a general proposition, that the formation of a tariff of charges for the transportation by a common carrier of persons or property is a *legislative* or *administrative*, rather than a judicial, function. Yet it has always been recognized that if a carrier attempted to charge a shipper an unreasonable sum, the courts had jurisdiction to inquire into that matter, and to award to the shipper any amount exacted from him in excess of a reasonable rate, and also, in a reverse case, to render judgment in favor of the carrier for the amount found to be a reasonable charge. The province of the courts is not changed, nor the limit of

judicial inquiry altered, because the legislature, instead of the carrier, prescribes the rates. The courts are not authorized to revise or change the body of rates imposed by a legislature or a commission. They do not determine whether one rate is preferable to another, or what, under all circumstances, would be fair and reasonable, as between the carriers and the shippers. They do not engage in any mere administrative work. But still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable, and such as to work a practical destruction to rights of property, and, if found so to be, to restrain its operation."

So in *Stone vs. Farmers' Loan & Trust Co.*, 116 U. S., 307, 331, in which the right of a State to prescribe maximum rates is recognized, Chief Justice Waite said: "From what has thus been said, it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation or without due process of law."

### **The Granger Cases.**

In reply, the *Chicago, Burlington and Quincy Railroad Company vs. Iowa*, 94 U. S., 155, and *Peik vs. Chicago and Northwestern Railway Company*, 94 U. S., 178, are cited, in which the Chief Justice had held, on the authority of *Munn vs. Illinois*, *Ib.* 134, that, until Congress legislated on the subject of interstate commerce, the legislature of any State whose Constitution authorized it, might arbitrarily prescribe a maximum rate to be charged by carriers of both State and interstate commerce within its borders, and that

however unreasonable or ruinously low the rate prescribed the carrier was without remedy or relief otherwise than by an appeal to the ballot-box or the legislature and procuring the maximum to be raised or by going out of business.

### Modification of This Opinion.

This opinion of the Chief Justice afterwards underwent great and substantial modification, for he subsequently concurred in *Packet Co. vs. Keokuk*, 95 U. S., 80; *Packet Co. vs. St. Louis*, 100 U. S., 423; *Packet Co. vs. Catlettsburg*, 105 U. S., 559; *Transportation Co. vs. Parkersburg*, 107 U. S., 691; *Huse vs. Glover*, 119 U. S., 544; and *Kilbourn vs. Thompson*, 103 U. S., 168, and himself announced the opinion in *Stone vs. Farmers' Loan & Trust Co.*, 116 U. S., 307, 331, which cases are cited *supra*. These cases supplemented by *Reagan vs. Farmers' Loan & Trust Co.*, 154 U. S., 1047, *supra*, restore and re-establish the ancient rule, that when a patron commits his person or his property to a carrier to be transported into or beyond another State, it is with the implied understanding that the patron will pay and the carrier will charge only what his service is reasonably worth *quantum meruit vel quantum valebat*, any rate prescribed by the State legislature or by Congress or by the carrier to the contrary notwithstanding; and that, in case of controversy between them about the charge, either party may have it judicially inquired of and determined in some Federal Court by an original action or proceeding commenced therein, or on error to or removal from the State court; and this is now the firmly established or re-established rule.

### The Question Under Consideration.

But if the opinion of the Chief Justice in the Granger cases had undergone no modification, the points decided therein have no application to or bearing on the subject of

the present discussion. All questions and inquiries respecting the powers which the State legislatures may respectively exercise over local State or interstate commerce are foreign to and without bearing on the present discussion. The question under consideration is, not what powers the State legislature may exercise over commerce of any kind within its border in the absence of legislation on the subject by Congress or otherwise, not whether the legislature of this or that State may delegate legislative power to a subordinate tribunal, board, or commission; not whether the Supreme Court has or has not upheld such delegation of legislative power by the legislature of some State, but does the Constitution of the United States authorize *Congress* to sub-delegate legislative power to any other department or to any inferior tribunal, official board, commission, or officer, in any case or for any purpose? If it may sub-delegate to a commission the power to legislate respecting any one of the subjects enumerated in Section 8, it may sub-delegate to such commission the power to legislate respecting each and every subject enumerated in said section or elsewhere in the Constitution. The proposition that Congress may sub-delegate to such commission the power to regulate commerce between the States and with foreign nations finds no more warrant or support in the Constitution than does the proposition that it may sub-delegate to such commission the power to lay and collect duties, imposts, excises, and direct taxes; or coin money and regulate the value thereof, and of foreign coin; or to establish a uniform standard of weights, measures and values, etc. No distinction between them is discoverable or possible. They who affirm the authority of Congress to sub-delegate legislative power in any case ascribe to that instrument a meaning such as if it read thus:

“All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a



Senate and House of Representatives:" provided, however, that the Congress may in its discretion sub-delegate to any inferior tribunal, official board, or commission, by it created, plenary legislative power :

1. To lay and collect taxes, duties, imposts and excises ;
2. To borrow money on the credit of the United States ;
3. To regulate commerce with foreign nations and among the several States and with the Indian tribes ;
4. To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States ;
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures ;
6. To provide for the punishment of counterfeiting the securities and current coin of the United States ;
7. To establish postoffices and post roads ;
8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries ;
9. To constitute tribunals inferior to the Supreme Court ;
10. To define and punish piracies and felonies committed on the high seas and offenses against the law of nations ;
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water ;
12. To raise and support armies ;
13. To provide and maintain a navy ;
14. To make rules for the government and regulation of the land and naval forces ;
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions ;
16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States ;

17. To exercise exclusive legislation in all cases whatsoever over the District of Columbia \* \* \* and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

The absurdity of the proposition that Congress is authorized to and may sub-delegate to a subordinate board or commission the power to legislate respecting the eighteen subjects so enumerated or respecting any one of them rather than another or all is self-evident on a most casual inspection of the Constitution. It can no more sub-delegate to such commission legislative power to regulate commerce with foreign nations and among the several States, and with the Indian tribes, than it can sub-delegate legislative power over each one or all of the seventeen other subjects of legislation therein enumerated.

### **Application of the Foregoing.**

VI. In the light of the foregoing, some of the proposed legislation now pending before Congress will be next examined. As House Bill 10099 has some features common to all the others, its analysis will suffice for all.

1. By its first section all interstate and international commerce reaching its intended destination in any part by railway transportation is within its operation, while all which reaches its intended destination by water transportation exclusively is excluded therefrom. Thus, two cargoes of Cuban products ascend the Mississippi destined for St. Louis. At New Orleans one is transshipped and proceeds to its des-

tionation by rail, the other proceeds by water; the former is included, the latter is excluded. Two cargoes are shipped at Albany destined to a foreign port. One proceeds down the Hudson and out to sea by water; the other reaches New York by railway and is there transshipped. The former is excluded from the operation of the bill, while the latter is included, although it does not pass into or through any other State or Territory of the United States. Two cargoes destined for Buffalo are shipped at Chicago; one by rail, the other by the lakes. The former is included, the latter excluded. The carriers by water may cut rates or discriminate at will, while carriers by rail doing either are condemned and heavily punished. Why this discrimination? Are not carriers by rail entitled to a square deal and even-handed justice?

2. Section 5, amending Section 16 of the existing law, empowers the Commission on complaint and hearing to adjudge and order that a carrier by rail shall respond in *damages* and make reparation in money to the complainant for past excessive charges, *without trial by jury*, or the right of appeal, which is depriving him of property "without due process of law," for Amendment VII provides that "in suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law." Congress cannot, by any scheme or device, require a citizen to respond in damages at the order of a commission or other authority without jury trial, and hence every such finding, judgment and order made by the Commission must of necessity be null and void.

The bill appears to recognize this, for it undertakes to validate the judgment and order of the Commission by providing that "if a carrier does not comply with an order for the payment of money within the time limit in such order,

the complainant or any person for whose benefit such order was made, may file in the proper circuit court of the United States \* \* \* on the *law side*, a petition setting forth briefly the causes for which he claims damages, *and the order of the Commission in the premises.*" By this circumlocution it must have been intended that, because the carrier in such action at law in the circuit court will be entitled to demand and have a trial by jury of the same matters of complaint covered by the finding, judgment and order of the Commission, that finding, judgment, and order will be thereby validated and made regular, for the bill further provides that "such suit shall proceed in all respects like other civil suits for damages, except that *the findings and order of the Commission shall be prima facie evidence of the facts therein stated.*" The action is brought on and to enforce the order of the Commission as a valid and subsisting judgment, for it is expressly provided that the petition in such action shall set forth "*the order of the Commission in the premises;*" and then the same order of the Commission on which the suit is founded, and to enforce which it is brought, is made *prima facie* evidence that the facts on which the order was made are true, and that the complainant is entitled to recover the amount of the order. Thus Congress by legislative enactment makes a void order of the Commission a cause of action in the circuit court, and commands that the order shall be *prima facie* evidence of its validity and of the complainant's right to recover the amount thereof. This reverses the manner of conducting trials by jury at common law, by which the complainant is required to first submit his evidence, and casts the burden of proof on the defendant, the carrier, to show himself innocent. If the legislative department, the Congress, has power, by enactment, to make such order of the Commission *prima facie* evidence, it may make the order conclusive evidence of its validity or the correctness of the findings on which it was made. Because it can-

not make the order conclusive evidence it cannot make it *prima facie* evidence.

Assuming, however, that Congress has power to do these things, the same section of the bill further provides that "in all such suits (in the circuit court) all parties in whose favor the Commission may have made an award for damages by any order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants. \* \* \* In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff." At common law it is required that the action be brought by one plaintiff or by several having a joint demand against one defendant or several jointly liable. The scheme of this bill is that any number of plaintiffs, twenty, fifty, one hundred, or more, no two of whom have a joint demand, may unite in an action at law against twenty, fifty, one hundred, or more, carriers as defendants, no two of whom are jointly liable, in which action each party is entitled to demand and have due process of law by jury trial, so that we shall have the anomaly in common law jurisprudence of a hundred or more verdicts returned by one and the same jury in one and the same action at law for money damages, between a hundred or more parties whose interests and liabilities are several and distinct each from the other, and this notwithstanding the bill expressly provides that "such suit shall proceed in all respects like other civil suits for damages" at common law. Nor is the action or suit so provided for limited to citizens of different States, for all the defendants except one, and all the plaintiffs, may be citizens of the same State. This revolutionizes the system



of common law jurisprudence known to the framers of the Constitution and provided for in that instrument. With equal reason it can be affirmed that Congress, in the plentitude of its power, may authorize any number of New York merchants, no two of whom have a joint claim, to unite in one action at law against any number of defendants, no two of whom are jointly liable, and all of whom save one may be also citizens of New York.

It is impossible for a jury in such case to comprehend and intelligently consider the multitudinous questions arising in the course of such a complex trial, or apply the evidence and render a just verdict between each of the opposing parties.

3. Section 3, amending Section 15, delegates to the Commission *legislative power* "to determine and *prescribe* what will in its judgment be the just and reasonable maximum rate or rates, charge or charges, to be thereafter observed in such case; and what regulation or practice in respect to such transportation is just, fair and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, and shall not thereafter publish, demand, or collect any rate for such transportation in excess of the maximum so prescribed, and shall conform to the regulation or practice so prescribed;" also "to establish through routes and maximum joint rates." In *Interstate Commerce Commission vs. Cincinnati, N. O. & T. P. Ry. Co.*, 167 U. S., 902, N. R. S., it was determined that "the power to prescribe a tariff of rates for carriage by a common carrier is a *legislative*, and not an *administrative* or *judicial* function." That Congress is without authority to delegate legislative power to any other department, tribunal, commission, or officer, has already been shown. but will be further considered later.

The bill, recognizing the impotency of the Commission's order prescribing maximum future rates, then provides

that "if any carrier fails or neglects to obey any order of the Commission, *other than for the payment of money*, while the same is in effect any party injured thereby, or the Commission in its own name, may apply to the circuit court in the district where such carrier has its principal office, or in which the violation or disobedience of such order shall happen for an enforcement of such order. Such application shall be by petition, which shall state *the substance of the order* and the respect in which the carrier has failed of obedience. \* \* \* If, upon such hearing as the court may determine to be necessary, it appears that the order *was lawful* and was made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same."

Whatever legislative power constitutionally prescribes, is the supreme law of the land, and, as such, is "lawful." Its reasonableness, expediency, or policy is not the subject of judicial inquiry, nor a ground for its judicial annulment. The only unlawfulness for which an expression of legislative will can be judicially annulled, is the absence of constitutional authority to express it.

If the Commission be invested with legislative power to *authoritatively* prescribe the rates of charges by carriers, its order prescribing them will be the supreme law of the land, and, as such, lawful. The reasonableness or unreasonableness of the rates so prescribed cannot be the subject of judicial inquiry nor a ground for declining to judicially confirm it. The only unlawfulness for which the court can decline to judicially confirm and enforce any order of the Commission prescribing maximum rates, is

want of legislative power in the Commission to prescribe them, and therefore the want of constitutional authority in Congress to enact a statute delegating such legislative power to the Commission. However unreasonably low or confiscatory the rates so prescribed may be, the court must find the order to be lawful and enforce it, if it find authority in the Commission to make it; and the carrier is without remedy or relief otherwise than by appealing to the Commission, or to the President for its removal and the appointment of another.

### **A Common Criticism.**

To analyze in detail the several Bills now pending before Congress, would extend this discussion to an "unreasonable" length. The infirmities common to nearly all of them are provisions:

(a) Vesting in the Commission legislative power to prescribe maximum and other rates to be charged by carriers, which the Congress is without authority to sub-delegate to it.

(b) Clothing the Commission with judicial power to find and adjudge that carriers who, in its opinion, have exacted and collected excessive rates, shall respond in damages and make reparation in money without trial by jury, which is depriving them of their property otherwise than "by due process of law."

(c) And depriving both shippers and carriers, who are citizens of different States, of the right guaranteed them by the Constitution to invoke and have judicial inquiry and determination of controversies between them respecting the reasonableness or unreasonableness of rates by some Federal Court, and substituting therefor a species of judicial inquiry and process unknown to the Constitution. This

third infirmity requires a more extended notice than its mere statement.

Art. VI of the Constitution ordains that "this Constitution, and the laws of the United States which shall be made *in pursuance thereof* \* \* \* shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding;" and Art. III. that "the judicial power shall extend to all cases, *in law and equity*, arising under this Constitution," or "under the laws of the United States," or "between citizens of different States."

1. The judicial department of the government is bound to observe and enforce any legislation which is, and only such as is, within the constitutional power of the legislative department to enact. It is not bound to observe or enforce, but may ignore and disregard, any legislation not enacted in pursuance of the Constitution. Therefore, any legislation which the judicial department is not bound to observe and enforce, but may ignore and disregard, is not within the constitutional power of the legislative department to enact, but is null and void.

2. Neither department of the government can deprive any other department of, or abridge, or trench upon, the powers, functions, or jurisdiction vested in it by the Constitution. The power to take jurisdiction of and determine controversies between citizens of different States, is, by the Constitution, vested in the judicial department of which it cannot be divested or deprived by any enactment of the legislative department or otherwise. In *Kilbourn vs. Thompson*, 103 U. S. 168, Mr. Justice Miller, speaking for the Court, said: "The Constitution divides the powers of the government which it establishes into three departments—the executive, the legislative, and the judicial—and unlimited power is conferred on no department or

officer of the government. It is essential to the successful working of the system that the lines which separate those departments shall be clearly defined and closely followed, and that neither of them shall be permitted to encroach upon the powers exclusively confided to the others."

3. Every citizen of any State who commits his person or his property to a common carrier to be transported beyond the State, does it with the implied understanding that he shall pay, and the carrier shall charge therefor, only such compensation as the service is reasonably worth, and that, in the event of a controversy arising between them respecting such compensation, either party may apply to and have it judicially inquired of and determined by some Federal Court having original jurisdiction, a sufficient number of which courts Congress is under constitutional obligation to provide and establish. As said by Mr. Justice Brewer, in *Reagan vs. Farmers' Loan & Trust Co.*, 154 U. S., 1054, N. R. S., "It is doubtless true, as a general proposition, that the formation of a tariff of charges for the transportation by a common carrier of persons or property is a legislative or administrative, rather than a judicial, function. *Yet it has always been recognized that, if a carrier attempted to charge a shipper an unreasonable sum, the courts had jurisdiction to inquire into that matter, and to award to the shipper any amount exacted from him in excess of a reasonable rate, and also, in a reverse case, to render judgment in favor of the carrier for the amount found to be a reasonable charge. The province of the courts is not changed, nor the limit of judicial inquiry altered, because the legislature, instead of the carrier, prescribes the rates.* The courts are not authorized to revise or change the body of rates imposed by a legislature or a commission. They do not determine whether one rate is preferable to another, or what, under all circum-



stances, would be fair and reasonable, as between the carriers and the shippers. They do not engage in any mere administrative work. But still *there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable*, and such as to work a practical destruction to rights of property, and if found so to be, to restrain its operation." So, in *Stone vs. Farmers' Loan & Trust Co.*, 116 U. S., 307, 331, Chief Justice Waite said: "From what has thus been said it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretence of regulating fares and freights, the State cannot require a railroad corporation to carry persons or property without reward, neither can it do that which in law amounts to a taking of private property for public use without just compensation or without due process of law." See also, as cited, *supra*, 23, *et sequens*, *Packet Co. vs. Keokuk*, 95 U. S., 80; *Packet Co. vs. St. Louis*, 100, U. S., 423; *Transportation Co. vs. Parkersburg*, 107 U. S., 691; and *Huse vs. Glover*, 119 U. S., 544.

4. Hence, as stated, *supra*, by the organic law of the nation, every shipper, common carrier, or other citizen of any State, having cause of complaint, *legal or equitable*, arising under a law of the United States, or against a citizen of another State, is guaranteed the constitutional right to have it judicially inquired of and determined by due process of law in some Federal Court of original jurisdiction, of which right he cannot be lawfully deprived by the United States or any State, nor by any department, tribunal, commission, or official board of either. When the complaint challenges a carrier's charges as unreasonably high or discriminatory, the shipper or other person prejudiced is entitled to demand and have such judicial inquiry and determination in the proper Federal Court; when the complaint challenges

the rates of charges prescribed by Congress or any inferior tribunal or commission as unreasonably low or confiscatory, it is the constitutional right of the carrier to demand and have such judicial inquiry and determination in such Federal Court. In *Transportation Co. vs. Parkersburg*, 107 U. S., 699, Mr. Justice Bradley said: "When the question is one of reasonable or unreasonable wharfage, we know what to do with it. It is a question known to the laws; and the modes of redress for unreasonable wharfage are fixed and settled." They are, as between citizens of different States, by judicial inquiry and determination in the proper Federal Court, the same as controversies between shippers and carriers who are citizens of different States are inquired of and determined.

5. By the authorities above cited and many others which might be it is firmly established that in any such inquiry and determination respecting the charges made by a carrier of interstate commerce, the judicial department of the government, in ascertaining the reasonableness or unreasonableness thereof, may wholly disregard any maximum or other rate prescribed by the legislative department, or by any State legislature, or by the carrier, and determine its reasonableness or unreasonableness on evidence without reference to either, which it could not as to a rate prescribed by Congress if that body is invested with constitutional power to prescribe maximum or other rates; for in such case the rate prescribed by it would be the supreme law of the land, which the judicial department would be bound to observe and respect. But because in such inquiry the judicial department is not bound to observe or enforce any rate legislatively prescribed, but may ignore and disregard it, Congress is without constitutional power to prescribe it.

## Privileges and Francises.

Whoever has the right and authority to grant or withhold a privilege may, in granting it, impose limitations on its exercise or enjoyment as the condition of the grant. Thus a municipality, having the right and authority to grant special privileges in or upon its streets to draymen, hackmen, or others, may, as a condition of the grant, limit the rates to be charged by them for their services. So Congress, having the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," may, in granting a special privilege within or upon the public domain, as the building and operating a railroad within or through the same, impose such limitations upon the exercise and enjoyment of the privilege as it may deem proper, or may reserve the authority to impose them subsequently.

The grant of a franchise to be a corporation and exercise corporate powers is the prerogative right of sovereignty. In Great Britain the right is lodged with and belongs to the sovereign king, except in so far as he may have voluntarily surrendered it by assenting to and approving Acts of Parliament. In this country the right as to some corporations is reserved to and lodged with the States severally, which, by their respective Constitutions, is vested in the several State legislatures; but as to others it is by the Federal Constitution delegated to and lodged with the Congress.

In the exercise of its reserved sovereignty, each State, by its legislature, may grant the franchise to be a corporation and to exercise corporate powers within its own border, or in any other State with its assent, and, in making the grant, it may impose limitations on their exercise *in limine*, or reserve the authority to impose *reasonable* limitations subsequently. Thus, it may grant the franchise to be a corporation, and as such to exercise the powers and perform the

functions of a common carrier; and, in making the grant, may limit the rates of charges to be made by it for its services and reserve authority to impose *reasonable* limitations on such rates subsequently. *Stone vs. Farmers' Loan & Trust Co.*, 116 U. S., 331. So, in the exercise of its delegated sovereignty, Congress may grant the franchise to be a corporation, and to exercise corporate powers and in making the grant, may impose limitations on their exercise *in limine*, or reserve the authority to impose *reasonable* limitations subsequently. Thus it may grant the franchise to be a corporation, and as such to exercise the powers and perform the functions of a National Bank; and, in making the grant, may impose limitations on the exercise of its powers *in limine*, or reserve the authority to impose *reasonable* limitations thereon subsequently or both.

But the powers granted to a corporation by the State legislature must not be inconsistent with the delegated powers and sovereignty of Congress, and the powers granted to a corporation by Congress must not trench upon nor invade the reserved sovereignty of the State. No State legislature, therefore, can, by virtue of its reserved sovereignty, impose limitations on the powers granted to a corporation by Congress nor can Congress, by virtue of its delegated sovereignty, impose limitations on the powers granted to a corporation by any State. Hence, Congress cannot, by virtue of its delegated sovereignty, limit the charges of a corporate carrier exercising its powers and functions under a corporate franchise granted by State authority. Being thus powerless to *authoritatively* impose such limitations in virtue of its delegated sovereignty, for the reason that the judicial department may ignore and wholly disregard them in exercising its constitutional right and jurisdiction to inquire of and determine the reasonableness of a carrier's charges, it is, for the same

reason, powerless to impose them as a commercial regulation or otherwise; and hence, is without authority to prescribe maximum or other rates to be charged by interstate or international carriers under any circumstances.

### **Regulation by Congress Not Possible.**

1. When the Union was reconstructed the States were separately sovereign, each empowered to lay and collect duties on imports from and exports by or through it to any other State or foreign country. The continued existence of such power must have inevitably become the source and cause of irritation, discord, mutual hostilities, and possibly armed collision between them. To cement and perpetuate the fabric in the bonds of enduring friendship and concord, absolute freedom of trade and commercial intercourse was established throughout the Union, and the citizens of each State guaranteed all the privileges and immunities of citizens in the several States; so that no State, which traffic or his calling induced a citizen of another State to enter, might impose on him or his property exactions or burdens other than or different from those to which it subjected its own citizens. But this alone might prove inadequate protection. Each State, in the exercise of its reserved sovereignty and police power, might still, for the safety of commerce while in transit within its borders, establish rules and regulations and require the instrumentalities thereof to be furnished with appliances and equipments, different from and inconsistent with those established and required by every other State; so that the carrier of interstate or international commerce might, at every State line which he crossed, encounter a body of rules, regulations and requirements, with which he was not and could not have been prepared to comply. To provide against such possibility Congress was empow-



ered to prescribe rules for the regulation of such commerce which should have *uniform* operation in each and all of the States. As said by Mr. Justice Field, speaking for the Court, in *Welton vs. State of Missouri*, 91 U. S., 275, 280, Chief Justice Waite and the other eminent jurists then on the bench concurring: "It will not be denied that that portion of commerce with foreign countries and between the States which consists in the transportation and exchange of commodities is of national importance and admits and requires *uniformity* of regulation. The very object was to insure this *uniformity* against discriminating State legislation. \* \* \* The power which insures *uniformity* of commercial regulation must cover the property which is transported as an article of commerce from hostile or interfering legislation until it has mingled with and become a part of the general property of the country, and subject like it to similar protection and to no greater burden."

### Uniformity of Rates Not Possible.

It is a firmly established rule of law that common carriers shall not charge more, nor be required to accept less, than *reasonable rates* of compensation for their services, any rate prescribed by State authority or by Federal authority, or by the carrier to the contrary notwithstanding. Hence, *uniformity* of rate charges by all common carriers, employing the same kind of instrumentality in the transportation of international or interstate commerce, cannot be prescribed or required by Congress as a commercial regulation without violating this established rule of law and working intolerable injustice and oppression; for what may be a reasonable rate for one carrier by railway or other instrumentality may be and in the nature of things must be unreasonably high and excessive or unreasonably low and confiscatory for other carriers employing the same kind of instrumentality

in different States, or even in the same State, under different conditions. The commercial regulations, *uniformity* of which throughout the States is mandatory, as held in *Welton vs. Missouri*, *supra*, do not nor can include the regulation of the rates charged by carriers, for the reason that no regulation or uniformity of such rates can, in any degree or respect, subserve any object or purpose stated in *Welton vs. Missouri* as the object or purpose which the authors of the Constitution contemplated and sought to effectuate by empowering Congress to regulate commerce with foreign nations and among the several States. Therefore, because *uniformity* throughout the States is peremptorily required of all and the only commercial regulations which Congress is empowered to prescribe; because no regulation of nor *uniformity* in the rates charged by carriers of international or interstate commerce can subserve any object or purpose, to effectuate which Congress is empowered to regulate such commerce; because *uniformity* in the rates of such carriers cannot be prescribed and enforced without resulting in making the rates of some carriers unreasonably high or excessive and of others unreasonably low or confiscatory, the very consequences sought to be averted and because the authors of the Constitution cannot be presumed to have intended to, and they did not delegate to Congress a power the exercise of which by it was impossible or impracticable, or could effectuate or subserve no object or purpose for which the government was established, they, in delegating to that body the power to regulate commerce with foreign nations and among the several States, did not intend to, and the Constitution does not, vest in it the power to prescribe or regulate the rates to be charged by the carriers of such commerce.

2. This conclusion is confirmed by other reasons. The intent of the lawmaker is the law; the absence of such intent is its negation. The makers of the Constitution were practi-

cal statesmen who framed a government to which, and each department of which, they intended to and did delegate only practical powers. They intended to and did delegate to the legislative department only powers which, by legislative enactment, it could, and as occasion or necessity therefor arose, it should so exercise. They did not intend to, and the Constitution they framed does not delegate to that department any power which it would be or is not only impracticable but impossible for it, by legislative enactment, to exercise for any purpose. It is not only impracticable but physically impossible for the two Houses of Congress to prescribe and readjust, from time to time, reasonable maximum or other rate charges by the multiplied hundreds of carriers of international and interstate commerce under multiplied thousands of different and constantly shifting conditions. Therefore, in empowering Congress to regulate commerce with foreign nations and among the several States they did not intend to and the Constitution does not include the impracticable and nugatory power of regulating or prescribing maximum or other rate charges of such carriers. That body has never attempted by legislative enactment itself to exercise such power, and neither frenzy, nor folly, nor rashness can ever impel the attempt.

3. Further, among the powers expressly delegated to Congress by the Constitution, that of regulating or prescribing reasonable maximum or other rate charges by carriers of international or interstate commerce is not enumerated, for which reason it is not among the powers expressly delegated to that department. Can its delegation to that body be implied as necessary or proper for carrying into execution any of the powers expressly delegated to it? The effective exercise of implied power is and can be the only evidence of its existence. The delegation to Congress of a power which it is physically impossible for that body to exercise

by legislative enactment cannot be implied. As before stated it is physically impossible for the two Houses of Congress to prescribe, by legislative enactment, reasonable maximum or other rate charges by the carriers of international or interstate commerce, and more certainly impossible to prescribe rates which shall have *uniformity* of operation throughout the United States; and therefore, the delegation to that body of power to prescribe them cannot be implied. Hence, the power to prescribe maximum or other rate charges of common carriers not having been delegated to Congress either expressly or by implication it has not been nor was ever intended to be vested in that body, and not possessing the power it cannot be by it sub-delegated to another.

### Resume.

1. The only subjects of international or interstate commerce are the persons and property transported; *supra*, 2. The rate charges by common carriers are neither persons nor property transported, and are, therefore, not the subject of such commerce.

2. The only subjects of commercial regulation are the instrumentalities, vehicles, appliances, agencies, equipments, facilities, and conveniences used or employed by the carrier in furthering the persons and property by him transported to their ultimate destination, and for their protection, safety, or comfort while in transit; *supra*, page 3. The compensation of the carrier is neither an instrumentality, nor a vehicle, appliance, agency, equipment, facility, or convenience employed by him in the transportation of persons or property, and hence, is not the subject of commercial regulation.

3. The only object of international or interstate regulation of commerce is the protection and safety of the persons and property transported, and their exemption from

tribute levied and other burdens imposed by State authority while in transit, *supra*, page 6. Neither the reasonableness nor the unreasonableness of the carrier's charges can contribute in the slightest degree to the safety or protection of the persons or property by him transported, nor their exemption from tribute or burdens by State authority, and hence, neither can be either the subject nor the object of commercial regulation.

4. The regulation by Congress of the compensation to be charged by the carrier of interstate or international commerce, is as absolutely inconsistent with that freedom of commercial intercourse established by the Constitution between the States, as is the regulation by that body of the prices current of the mercantile commodities transported.

5. The power to regulate or prescribe the compensation of common carriers of such commerce is not among the express powers delegated by the Constitution; and because it is physically impossible for Congress to prescribe the rates of multiplied hundreds of carriers under multiplied thousands of constantly varying conditions by or according to any rule which can have *uniformity* of operation throughout the United States, or even in any one of them, the delegation of the power cannot be implied.

6. To repeat; the power to prescribe maximum or other rate charges of common carriers, not having been delegated to Congress either expressly or by implication, it has not been, nor was ever intended to be, vested in that body; and not possessing the power, it cannot be by it sub-delegated to another.

### Superfluous Litigation.

None of the pending bills propose to repeal or alter Section 22 of the present Interstate Commerce Law, which expressly provides that "nothing in this Act contained shall



in any way abridge or alter the remedies now existing *at common law* or by statute, but the provisions of this Act are in addition to such remedies."

1. Without this saving, every shipper of any State having a cause of complaint, legal or equitable, against a carrier of another State, and every carrier of any State having a cause of complaint, legal or equitable, against a shipper of another State, respecting the reasonableness or unreasonableness of rates whether prescribed by State authority, or by Federal authority, or by the carrier, is guaranteed the constitutional right to have it judicially inquired of and determined by due process of law in some proper Federal Court of original jurisdiction, of which right he cannot be lawfully deprived by the United States, nor by any State, nor by any department of the government; and it is the constitutional right and duty of such Court to take jurisdiction of and determine such controversy, of which it cannot be divested nor relieved by any enactment of the legislative department or otherwise. As held in *Reagan vs. Farmers' Loan & Trust Co.*, 154 U. S., 1052, (Nat'l. Rep. System): "It has always been recognized that, if a carrier attempted to charge a shipper an unreasonable sum, the courts had jurisdiction to inquire into the matter and to award to the shipper any amount exacted from him in excess of a reasonable rate, and also, in a reverse case, to render judgment in favor of the carrier for the amount found to be a reasonable charge. The province of the courts is not changed, nor the limit of judicial inquiry altered, because the legislature, instead of the carrier, prescribes the rates. \* \* \* There can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or by a commission is unjust and unreasonable, and such as to work a practical destruction to rights of property, and, if found so to be, to restrain its operation."

2. The several Bills before Congress recognize this constitutional right of the carrier to his day in court, and the constitutional obligation of the court to hear and determine his complaint, for neither of them undertakes to make any order of the Commission *final*, but provides for instituting in some proper court an action at law or suit in equity to enforce or restrain it, to which the carrier shall be made a party, obviously intending and expecting that such action or suit will preserve to him his day in court. Thus two judicial proceedings are required, one by and before the Commission, the other in and by the Court, before a controversy between the shipper and carrier is *finally determined*.

3. As the finding and judgment of the Commission establishes no principle, terminates no litigation, settles nothing, and concludes nobody, and as, notwithstanding it, the pending Bills concede that judicial inquiry by some proper court must be ultimately invoked before *finality* can be reached, is it not the part of wisdom and sound policy to provide some mode of commercial regulation under which shippers and carriers, in the exercise of their constitutional right, may invoke judicial inquiry and determination by the proper court in the first instance, thereby avoiding superfluous litigation, while preventing encroachment upon the judicial by the legislative department. That such mode of regulation is not only possible, but practicable and simple, will next be shown.

### **The Beneficiaries of Commerce.**

Mercantile commerce is traffic in mercantile commodities. International commerce is the bringing into the United States, by whatever instrumentality, means, or mode of transit, mercantile commodities for the purpose of traffic. Interstate commerce is the transfer of mercantile commodities, by whatever instrumentality, means, or mode of transit,

from one State or Territory to another for like purpose. Whoever, for the purpose of traffic, so transfers mercantile commodities, in whatever mode or by whatever instrumentality, whether such instrumentality is owned by himself or another, is engaged in interstate commerce. The character of such commerce is not dependent on nor determined by the mode of transit, or the instrumentality by which it is effected, nor by the ownership of such instrumentality. Live stock so transferred by driving overland, or conveyed by rail or vessel, the commodities of the merchant or manufacturer so transferred, whether by some instrumentality owned by himself or by a common carrier; petroleum so transferred by private pipe-line; and every other mercantile commodity, in whatever manner transferred for such purpose, is interstate commerce. The ranchman who drives or ships his livestock from one State or Territory to another; the manufacturer who so ships his own products; the Standard Oil Company, which effects such transfer by its own private pipe-lines; the middle-man who so transfers the commodities of his purchase, are all engaged in interstate commerce, subject equally and alike to Federal regulation under Clause 3, Section 8, Art. I, of the Constitution.

The classes of persons whose interests, if they can, ought to be subserved by the Federal regulation of commerce, are the millions of agricultural and other producers who are concerned to have fair prices for their products, which can reach the general market only through middlemen, and the multiplied millions of consumers who are interested in low or moderate prices for the commodities they must purchase for use or consumption. Few of the pending bills propose to subserve their interests better in any respect than does the law as it existed when the Commerce Commission was created, and still exists. That law furnishes an ample and complete remedy against unreasonably high or excessive, and against discriminating charges by common carriers. If one

dollar per ton is a reasonable rate, and the carrier exacts one dollar and ten cents from Armour & Co. for transporting their vast commerce, they can recover the amount of the excess from the carrier in an action at common law without the aid and irrespective of the Commerce Commission. So, if the carrier charges Armour & Co. only the reasonable rate of one dollar, yet discriminates against them by simultaneously charging Smith & Co. only ninety cents for transporting the like class of commerce, Armour & Co. can recover from the carrier the amount of such discrimination in a like action at common law. Or, if the carrier persists in excessive or discriminatory charges against Armour & Co., they may go into Chancery and have him restrained by injunction. Few of the pending bills propose anything different from this in effect, but only to accomplish the same thing in a more circuitous method, and by relieving the shipper of the trouble and expense of protecting his own interests. They propose that the Commission shall prescribe what in its opinion are reasonable rates, and that, if the carrier shall thereafter charge Armour & Co. any higher rate, or shall discriminate in his charges against them in favor of Smith & Co. or other shipper, Armour & Co. may then go into court and, in an action at common law, recover from the carrier the amount of such excess or of such discrimination. But in either case the amount of recovery is only taken from the carrier's profits and put into the pockets of Armour & Co., thus swelling their profits, the millions of producers and the multiplied millions of consumers getting no part of it nor any benefit therefrom, unless Armour & Co. voluntarily choose to pay higher prices to the producer or charge lower prices to the consumer. The whole contention seems narrowed to a struggle about profits between carriers and shippers, and between shippers themselves, in which the apparent purpose of some of these bills is to restrict the carrier to reasonable profits while furnishing to dealers in

and shippers of such commerce a wider margin and a free hand, the interests of producers and consumers being lost sight of.

### Declaratory Legislation.

While it is competent to enact legislation declaratory of common law rights, or denunciatory of mischiefs which that law condemns, yet what is commerce with foreign nations and among the several States; who shall be deemed to be engaged therein; when and where a commodity in transit shall be deemed international commerce and when and where it shall be deemed interstate commerce; whether the existing or published rates of carriers are or are not reasonable, and what practices by them shall be deemed discriminatory as between shippers, commodities, ports, places, stations, shipping points, or localities, are all questions, not for legislative but for judicial *definition* and determination. An example of such declaratory legislation, showing its purpose and propriety, is the following:

(a) No common carrier shall charge more nor be required to accept less compensation for transporting either international or interstate commerce than his services are reasonably worth; nor charge for transporting any class of such commerce to or from any port, place, station, shipping point, or locality, a rate or sum which, though not unreasonable in itself, constitutes unjust and prejudicial discrimination against it, its business and shippers, when compared with the rate or rates published or charged for transporting the like amount and class of such commerce to or from the same or any other port, place, station, shipping point, or locality; nor charge such widely different rates for transporting different classes of commerce to or from the same port, place, station, shipping point, or locality, as to constitute, relatively, unreasonable, unjust, and



prejudicial discrimination between them; nor discriminate between shippers by charging either less than the other for substantially equal and similar services; nor by the allowance to either of rebates, drawbacks, commissions, differentials or preferentials; nor by allowances on account of transfer, switching, terminal, or elevator charges; nor on account of bridge tolls, ferry tolls, lockage tolls, or wharfage; nor on account of any services rendered, or instrumentalities or supplies furnished, by any shipper; nor unjustly discriminate between shippers, ports, places, stations, shipping points, or localities, in furnishing vehicles, instrumentalities and means of transportation, or in any other manner or by any other device.

1. The first clause above prohibits rates or charges which are *per se* excessive or unreasonably high.

2. The second clause is intended to cover the matter of long hauls and short hauls, for which purpose the language "to or from any port, place, station, shipping point, or locality," exactly covers the case, without using the words *long haul or short haul, over the same portion of line*, in the same or different directions, thus leaving the whole question for the court to determine whether, under the circumstances, a greater sum charged for a short haul than for a long haul is or is not unreasonable or unjust in the particular case before it.

3. The third clause sufficiently suggests its purpose, which is to prevent one class of commerce from bearing a greater relative burden than another class.

Such declaratory legislation does not create any right which the common law does not recognize, nor denounce any mischief which that law does not condemn, and for which it does not furnish judicial remedy. But the propriety of its enactment for the purpose of reference in enacting other legislation respecting it, is obvious. Thus:

(b) Every common carrier who does or practices any of the things condemned and forbidden in and by paragraph (a), shall forfeit as penalty therefor the sum of ten thousand dollars, etc. So the following:

(c) Whenever complaint is made to the Interstate Commerce Commission, that a named carrier is doing or practicing any of the things forbidden in and by paragraph (a), it shall be the duty of the Commission, if it has reason to believe there is probable ground for the complaint, to forthwith file or cause to be filed in the proper circuit court against the carrier complained of, a petition in the name of the United States, or some officer thereof, praying that the offending carrier be enjoined, etc. Under such proceeding the court may, by process of attachment as for contempt, and the imposition of heavy pecuniary penalties, or by imprisonment if need be, compel the offending carrier to desist from such practices. The imposition of a few such penalties and imprisonments would have the salutary effect of bringing all such carriers to a sense of their duty to observe the law. It is not the creation of new rights, but the rigorous, speedy, and impartial enforcement of existing rights; not the cumulation of mischiefs or remedies therefor, but the application and enforcement of existing remedies, to restrain mischiefs already recognized, which is needed. To this end and for this purpose, the assumption by the government of the enforcement of existing rights and remedies is indispensable, for the reason that multiplied thousands of small shippers cannot afford the cost and expense of prosecuting in their individual names in view of the small amounts involved, on account of which carriers continue their unreasonable, unjust, and discriminatory practices with impunity, and go "unwhipped of justice."

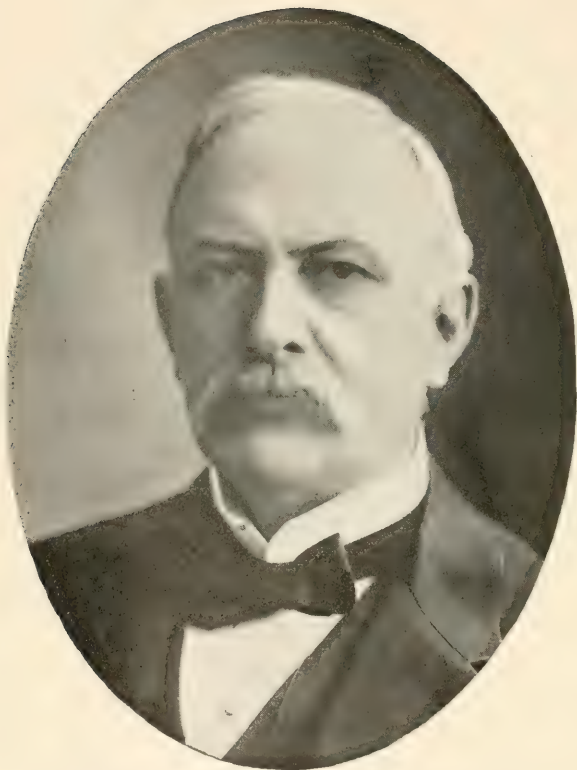
W. H. WEST.











JOSEPH BENSON FORAKER  
SENIOR U. S. SENATOR FROM OHIO

# JOSEPH BENSON FORAKER

Senior United States Senator from Ohio.

BY HENRY A. PAVEY.



SENATOR FORAKER narrowly missed being born on the seventieth anniversary of the Nation's birth; his eyes having opened to the darkness and the light of this world on July 5th, 1846, on his father's farm near Rainsborough, Highland County, Ohio.

Nature was kind to the youngster and placed him in an environment at once picturesque and pastoral, where he grew in boyhood in close, sympathetic familiarity with all her varying moods. To the east the wild gorges and ravines of Paint Creek and Rocky Fork bordered the high hills that stretch away into the blue distance of Pike and Ross Counties; while to the west and north the farm lands merged in the famous Corn Belt of Ohio, blending lowland and highland far and near in the landscape about his childhood's home.

Fate was not less kind in bestowing upon him the parents she did. In this age of snobbery and parvenu caste when the *nouveau riche* and their imitators make spectacles of themselves before gods and men in their ridiculous efforts to make genealogical trees grow green on the barren rocks of myth, and in the hunting of appropriated Coats of Arms of unknown significance and utter irrelevance, one sympathizes with the remark of Barry Wall—that he was "Proud to trace his descent in an unbroken line from his father and mother." It is a pride the Ohio Senator may also feel, for his

father and mother were of the best types of the strong hardy race of pioneers that came from New England to unite with the stream of immigrants from Virginia and North Carolina in the settlement of Southern Ohio. He owes them much for the physical and mental heritage he holds in fee from them and for the moral training they gave him, and he always gladly acknowledged his debt and ever strove as a dutiful son should to cancel it by every means that opportunity afforded or that love could suggest. Both died recently, full of years and honors. They had lived to see their son a successful lawyer, an upright judge, twice Governor of his State, and well nigh through his first term in the United States Senate, and to see his name blazoned in the newspapers of the country as a probable President of the United States. They met his colleagues in the Senate and his distinguished associates in public life, and with such bearing that their son was fain to own that he had as much cause for pride in the relationship as they.

Joseph Benson was the Christian name they bestowed upon him in honor of the once famous English Methodist preacher, Controversialist, and Commentator. "Ben" Foraker was and is the name by which he will always be known to his family, friends and army comrades. His surname, when spoken afar, often sounds strangely to the ears of his relatives and old neighbors, who, when in 1883, they

came to Hillsborough with an immense delegation to hear him as candidate for Governor address a big mass meeting—bore a huge transparency inscribed:

#### A 4 A C R E L O T.

That's the way it was pronounced before he became famous.

There were no kindergartens in rural Ohio when, at the age of five years, as was then the custom, Ben Foraker matriculated at the little country school house in Paint township. The ardent zeal he now brings to every task he essays to perform, distinguished him then and such was his progress that a few years only were needed to bring him to that goal of the country school boy's ambition—the Higher Arithmetic; for at that time, more than at present, the measure of intellectual capacity in the Country School was the ability of the youth to "Cipher" easily through Ray's Third Part, and Ray's Higher Arithmetic—through the "Third Part" at fifteen evidenced a high order of talent—through the "Higher" at sixteen demonstrated genius, and the prophets began to foresee future greatness, and predict it, as did Uncle Sammy Newell, who owned the local mill, and once saved the embryo Statesman's life by rescuing him nearly drowned from the mill pond into which he had fallen and foretold that the young Foraker would one day be Governor of his State.

His mathematical tasks accomplished, the precocious youth, like a well known character of fiction, wanted more. More, the country school could not bestow, and he came to Hillsboro at the age of sixteen to enter the office of the County Auditor as clerk, where however, he remained but a short time for his

thoughts were distracted from the figures of the Duplicate and county bills by the great Civil War, then on in earnest. The earth was shaken by the tread of hurrying armies and the air was filled with the war cries of the gathering hosts, the issue of whose strife was to determine the fate of the Union.

With an irresistible longing the boy burned to be "at the front" and at the age of sixteen, with the consent of his parents, the slender but wiry youth enlisted in Company A in the 89th Regiment of Ohio Volunteers. With his regiment he passed at once into active service. Hard marches were made. Skirmishes and general engagements thinned its ranks. Young Foraker never grew tired, never fell sick, nor ever fell behind. At the age of seventeen, at the battle of Lookout Mountain, he was First Lieutenant and led his company in the desperate, but successful assault on Missionary Ridge, where he was the first man of his regiment over the enemy's works—and it was in the front of the attacking column. In both battles of Atlanta, at Resacca, Burnt Hickory, Peachtree Creek and elsewhere the youthful soldier with his regiment participated in the fighting, *at the front*. Soon after the fall of Atlanta, in July 1864, Foraker was detailed for duty in the Signal Corps, and in that capacity serving on the staff of Major-General Slocum, he accompanied Sherman's army on its March to the Sea.

On the 14th day of June 1865—a veteran not yet nineteen years old and holding the rank of Captain, he was mustered out at Camp Dennison, Ohio.

With much knowledge of Nature and of human nature acquired in his farm life and army service Foraker at once resumed his interrupted studies. H



pent two years at the Wesleyan University, Delaware, Ohio; and two years more at Cornell University, Ithaca, N. Y., from whence he graduated in June 1869.

At the University he didn't learn to shoot craps, play poker, nor to smoke cigarettes. Not even football lured him; but he was on something better than peaking terms with the curriculum; and asked to translate his latin diploma he would have been able to state its substance, if not to render it literally.

While at Cornell he began the study of law. On his return to Ohio he continued his law studies in the office of Judge James Sloane at Cincinnati, Ohio. He was admitted to the bar in October 1869 and at once entered upon the practice of the law and achieved success by deserving it.

In October 1870 he was married to Miss Elia Bundy, a daughter of the Hon. H. Bundy of Wellston, Ohio, whom he met at Delaware when both were students at that place. The young couple began their first modest housekeeping at Norwood a suburb of Cincinnati. Later they removed to a more pretentious home in Walnut Hills, Cincinnati. Five children, two sons and three daughters blessed their home, and all are living. Two of the daughters are married. Joseph Benson, Jr. was admitted to the bar after his graduation from the University. Soon afterward he entered the army and served with the rank of Captain through the Spanish-American war; and is now Vice President, and an active manager of the Cincinnati Traction Company. Miss Louise, the unmarried daughter, and her brother Arthur St. Clair, a youth of fourteen, reside with their parents at the elegant, but always hospitable home on Sixteenth Street in

Washington. The Senator and Mrs. Foraker are both domestic in their tastes and their home life has always been an ideal one, yet they have never neglected any of their social duties, and at the Capital they are prominent as leaders in its highest and best social circles.

Ben Foraker never hid his light under a bushel. Cincinnatians saw it and recognized in him a man of superior ability; with that recognition came public demands upon the young lawyer to lend his energy and talents to the public service. He did not at first take kindly to the suggestions of those who would bestow political honors upon him. He was interested, absorbed, and busy in his profession, yet was he a patriot and a politician by birth and training; and none living has a better right than he to claim charter membership in the National Republican Party—a claim that has a good foundation upon an incident related to the writer by his mother soon after his first election as U. S. Senator. It happened in 1856, in the Presidential Campaign of that year when John C. Fremont, the first Republican nominee for the Presidency, opposed James Buchanan, the Democratic candidate. Young Foraker was then, as ever since, an ardent, zealous Republican. With all the enthusiasm of his nature and convictions, he entered the fray in behalf of Fremont to do all that a small boy could. He hid him to the woods and cut a vigorous tall sapling for a flag staff, and with severe, indefatigable labor succeeded in dragging it to the yard of the farm house where he dug a hole for its base; but his childish strength was not adequate to the task of "raising" it; wherefore, not to be baffled he drafted an elder sister into his service, and together

they planted the staff from which his defiant banner floated until the announcement of Fremont's defeat and Buchanan's triumph. Needless to say Ben Foraker has been an orthodox Republican ever since. He never wabbles, and never jumps the reservation. He takes his politics from the Republican party straight and not from any individual in or out of the party.

True, in the early years he heard voices whispering of honors to be won in the political arena; and about the middle Seventies he had vague dreams of the County Solicitor's Office; of the Prosecutor's Office, and in 1876 not seeking the nomination, he was put on the ticket for Common Pleas Judge. Eph Holland, a noted gambler of that time, was Boss of Cincinnati politics, and Foraker was defeated along with the rest of the ticket. That same year, Judge Baxter of the U. S. Circuit Court made him Chief Supervisor of Elections for the Southern District of Ohio, and he discharged the duties of that delicate and difficult position so fairly and well that Democrats vied with Republicans in praising his faithfulness to the trust reposed in him.

At the Spring Election of 1879, Foraker was elected as a Judge of the Superior Court for the term of five years. Doubtless that prize looked good to him in the beginning, and he entered upon the discharge of his judicial duties with all his characteristic ardor and industry; but the task was irksome to the ardent, impetuous man of action, and, although eminently well qualified intellectually, morally, and by legal attainments to distinguish himself as a jurist, and bestow fresh honors upon a Bench that had been honored by so many Eminent

Judges; and he honored the position while he filled it, yet the tasks imposed upon him were not congenial to his nature, and he pined and fell ill after three years of splendid service, and was obliged to resign because of his failing health.

By temper and temperament and Nature's design an Advocate, it would have killed him to sit as Umpire over a game played by Advocates.

When he tendered his resignation to Gov. Foster, the Bar of Hamilton County without regard to political views protested against an acceptance; but the necessity created by Judge Foraker's failing health was imperative, and the Governor could not refuse to release him.

Pegasus would have made an excellent plough horse, no doubt, if bred for the station in life, but he had wings that carried him from the furrow to the star.

After a year spent in repairing his shattered health, Judge Foraker in the autumn of 1883 accepted the Republican nomination for Governor, against Judge Hoadly, and made a gallant race though ended nevertheless in defeat; because was "An Off Year in Ohio."

However, he resolved to "pick his flint and try it again" and he did in 1888 defeating Gov. Hoadly, who was a candidate for a second term.

In 1887 Gov. Foraker was re-elected by a handsome majority. In 1889, another "Off Year in Ohio," he was nominated a fourth time by his party, but was defeated by James E. Campbell.

Considered from a utilitarian point of view, the governorship of Ohio is no good job. The chief executive of the State receives \$8,000.00 per annum, office in the State House, and his private Secretary and Clerk are paid by the State.





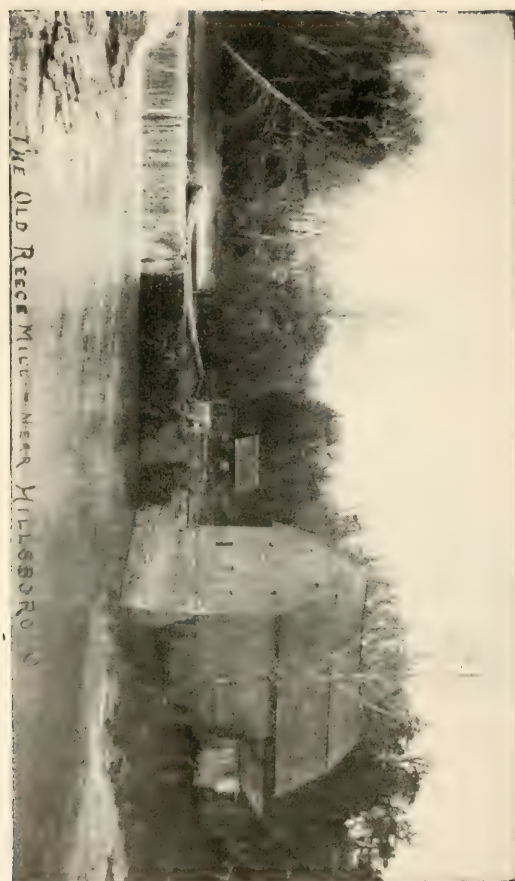
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H. S. FORAKER  
FATHER OF SENATOR FORAKER



MARGARET REECE FORAKER  
MOTHER OF SENATOR FORAKER



THE OLD REECE MILL - NEAR HILLSBORO

but the Governor is not "found." If he wants an Executive Mansion he rents or buys one at his own expense, the State puts the problem of maintaining the official and social dignity of the great and wealthy Commonwealth of Ohio on \$8,000 per annum up to her Governors; and a majority of them in the last forty years, some of them very rich men, have "gone broke" in the office, or soon after leaving it. Blessed someway, doubtless, are the Governors of Ohio, if it be indeed "More blessed to give than to receive;" for the Oil Inspectors of that State, who receive their appointment from the Governor, all get rich while the Executive grows poorer.

Foraker retired from the office in January 1890, little more than even with the world; in fact, if there was a balance it was on the wrong side of the ledger; but he had formed a wide acquaintance with public men, and people everywhere. Like James G. Blaine he never forgets a name or face, and thus is able to hold acquaintances and make them his friends.

He had been a positive and aggressive force in statecraft and politics, and had become a National figure of prominence and importance. Eloquent and magnetic, frank, candid, cordial, and always aggressive, he was the idol of the young Republicans of his State, whose well remembered slogan in all his campaigns was "Vim, Vigor and Victory," and they gave and still give him a personal loyalty and devotion like that accorded in his day to Tom Corwin, "The waggoner boy." Even the epithets applied to Foraker by his political foes were so descriptive of the virile qualities of the man that they inured to his benefit, and soon became obsolete.

From the Governor's office he passed but once and with greatly enhanced pres-

tige to a large and lucrative law practice the returns from which, with wisely managed investments, it is said, place his fortune in the coveted seven figures column.

In 1892 the friends of Governor Foraker in and out of the legislature were enthusiastic in their advocacy of his election to the United States Senate to succeed Senator Sherman; but in Ohio at that time there was a theory current that Sherman held his seat in the Senate by a prescriptive title, good until death or promotion should vacate it. That theory prevailed in the Republican legislative caucus; but there was a large minority vote for Foraker, and it was apparent that a very large proportion of the Republican party in the State was behind his candidacy, particularly the young, active, aggressive element with its great and growing enthusiasm for the popular leader, who to it was the embodiment of "Vim, Vigor and Victory."

Foraker returned to his big law practice undaunted and with undiminished confidence in his star.

The sentiment in favor of Foraker for the Senate grew steadily in the Republican ranks until in 1895 it was practically unanimous, and in the State Convention held in Zanesville in May of that year a resolution was passed by a unanimous vote, which endorsed the ex-Governor as the Republican candidate for United States Senator to succeed Hon. Calvin S. Brice, whose term was then drawing to its close. This resolution was not binding upon the legislature; but it so clearly expressed the sentiments, wishes and will of the Republicans of Ohio, that the State, with that issue before it, was carried by the Republicans with an enormous majority, in November. The legislature was overwhelmingly



Republican. When it assembled in January 1896 it proceeded at once, and without the usual formality of a caucus, for there was no opposition to Foraker, to elect him to the Senate of the United States for the full term of six years, beginning with March 4th, 1897. There was no cloud on his title, and the action of the legislature was approved throughout the country. At Cincinnati, on the 22nd of February following his election, his friends tendered him a grand banquet at the Scottish Rite Cathedral, which was attended by nearly four hundred of the leading professional and business men of the city of all parties, a truly representative body of men which, in a non-partisan way, endorsed and ratified the action of the people and the legislature, and set the "well done" seal of its approval upon their choice.

Senator Foraker was re-elected in 1902—again without opposition—without a formal caucus by the legislature, and without a dissenting voice or vote, and in his certificate of election he reads his title clear to a seat in the Senate until March 4th, 1909.

There is some discussion going on in several of the States, as to the wisdom and propriety of so amending the organic law, that United States Senators shall be chosen by the vote of the people of the State and not, as at present by the legislature. There is some agitation in favor of such an amendment. Recently the Ohio legislature, now in session, had presented to it a resolution demanding this "Reform in method of choosing Senators" (if indeed it be a reform) and it is believed that it will pass.

However that may be, and whatever the causes that led the feelings that prompt such a demand, it is certain that

no act, fact, or circumstance connected with the choice of Foraker, by Ohio legislatures, has ever caused a breath of scandal, or in any way contributed to irritation of the public mind, on the subject of choosing United States Senators.

The honors that have come to Foraker were all fairly won and fairly conceded. Not even the tongue of slander has ever imputed to him the commission of an unworthy act in private life, or in any of his campaigns.

Criticism, there has been, of some of his views on questions of public interest, but he has never incurred rebuke or censure from his constituents. Certainly no such criticism has ever been made of any act of his official career such as was directed against Washington, Hamilton, Webster, Corwin, Lincoln, Blaine, and many more of our eminent public men of the past in their day, a criticism so violent, vindictive and unjust, that it inspired the cynical and witty Thomas F. Reed to remark that "A Statesman is a politician who is dead." But the measure of a Statesman is often taken long before he is in his grave,—as the young Foraker said in 1873, when pronouncing a eulogy before the District Court at Hillsborough on his then, recently deceased preceptor Judge Sloane, "I once thought him only a cold, selfish, ambitious, intellectual giant; and, had I never come closer to him his loss would not now affect me much; for I have long since learned there are giants in *these* as well as in *those* days, and that the place of giants may always be supplied; I shall always be glad that it was within God's providence that I should know him better."

This extract warrants the surmise that the youthful speaker even then was

conscious of the power within him, that waited only the fulness of time for development.

"The dead but sceptered sovereigns  
who still rule  
Our spirits from their urns,"—

He will always be compelled to share their way with their living successors. The vice of calumny and detraction is usually visited at the tomb, and there are those, and Senator Foraker is of the number, who are not obliged to wait for posthumous recognition and fame. He had never served a day in a legislative assembly before he entered the Senate, yet he came to his great task with such an equipment as is rarely brought to that body; his powers had instant recognition. From the time he entered it he has held a commanding place, the foremost orator and debater in that great deliberative body which has always numbered among its members many eloquent orators and skillful debaters.

In his address at the Cincinnati banquet the Senator-elect said: "I am so constituted that I reach conclusions quickly, and sometimes have not as much patience as I should have with those who do not agree with me. I fear, therefore, that in that 'most august assemblage on earth,' as it has been termed, I shall be less useful than I otherwise would be when those long, tedious debates occur about which we have been reading so much during the last two or three years."

His fears were groundless, and the confidence of his friends was fully justified, when in July 1897, four months after his advent in the "most august assemblage" he rose to respond to the charge of Senator Allen of Nebraska, that the vote of Ohio for McKinley in

1896 was largely fraudulent, that body had a splendid exhibition of Foraker's unsurpassed qualities as a ready, fluent, and forcible debater.

In the scene that ensued with Foraker in the leading part, Senator Teller sought to take a hand in the hope of saving his colleague from the wreck and red ruin in which his temerity had involved him, but he only shared his fate and the floor was strewn, like the leaves on the strand, with the broken fragments of Allen and Teller and the subsequent proceedings in that connection had to do only with the disposal of their remains.

This incident led at once to a suspension, in his case, of the old absurd congressional etiquette that requires new members, like children, to be seen, not heard. Foraker became at once, and has continued ever since to be, the unconventional protagonist of the Senate—never a bull in the senatorial china shop like Tillman, but a parliamentary gladiator, armed and invincible at all points, an eminent constructive statesman in the framing of legislation to promote the public welfare, destructive only of shams, frauds, and false pretenses.

When the war with Spain came, none in either branch of Congress contributed more than did he toward securing the prompt legislation made necessary by that emergency; and when that brief strife ended and the country found itself face to face with new and perplexing problems, that in their solution would involve the determination of many grave questions as to the constitutional power of the United States to acquire, hold and govern territory, Foraker came at once to the front as the leader of the Senate in all that pertains to the broad, comprehensive constructive statesmanship dis-



played in that body in the last seven years, which has accomplished so much, not only in making history in the present, but in shaping the policy and destiny of the Nation in the years to come.

The fortunes of war had given to the United States the island of Porto Rico and the Philippine Islands. In addition we had recently acquired by treaty the islands of Hawaii, Alaska—purchased for a song thirty years before from Russia, mainly for the purpose of eliminating that empire from the Western Hemisphere, had lain quiet and almost unheeded beneath its mantle of snow, under the Arctic Circle, guarded by the dragons of the ice, apparently needing but little other guardianship; now at one bound leapt into wholly unanticipated prominence by reason of the discovery of the golden treasure hoarded in its frozen soil, and the tremendous rush of treasure seekers and adventurers to its inhospitable shores.

There were grave differences of opinion in, and out of the Congress of the United States as to the policies to be adopted by our government in dealing with these dependencies, acquired in such various ways, and under such varied conditions; and equally grave differences as to the kind and character of legislation needed to define the mutual relations, rights, and obligations of the Nation and its appanages.

Foraker in the Senate made the task of solving the problem so presented, and adjusting the differences growing out of them his own, and to him more than to any other statesman of his time the country is indebted for the wise and statesmanlike measures adopted for the government of our dependencies, or colonies,—measures, which as embodied

in legislative enactments have been passed upon and approved as to their constitutionality by the Supreme Court of the United States.

Wide as is the recognition of the value of his services it is yet probable that future generation will more fully appreciate the work of Ohio's distinguished son, as time discloses and makes more apparent their permanent and wide reaching utility.

Foraker has not been a specialist in the Senate. He has been influential in the discussion and solution of every important question, whether of Tariff, Inter-State Commerce, or Foreign Relations, that came before that body since his term of service began. Indeed it may well be doubted if any State has ever been more ably represented in the upper branch of our National legislature than was Ohio during the seven years service of Senator Foraker and his late lamented colleague, Senator Marcus A. Hanna.

No public man ever possessed greater capacity for hard work. In addition to his labors as a lawyer, as a Judge, as Chief Executive of his State, as United States Senator, he held the credentials of a delegate-at-large from his State in the last six Republican National Conventions. In 1896 and in 1900 he nominated and named the winner, McKinley. In 1888 he met at the National Convention that year, and formed the acquaintance of a prosperous Cleveland ironmaster who had just begun to be actively interested in politics. The name of the ironmaster was Marcus A. Hanna.

Foraker has been a vigorous, active campaigner in every campaign in his State, and every National campaign. His party and friends never yet had

cause to complain that he was lukewarm, idle, or indifferent.

He don't hunt, fish, sail yachts, nor play golf. He rests by getting busy at something else, changing his occupation.

His public addresses, other than political have an interest that seldom attaches to such discourses, because of the lucidity and vigor of his style and the originality that he brings to the treatment of every theme. His oration at Chillicothe three years ago on the occasion of the celebration of Ohio's Centenary, on "Ohio in the Senate," is a masterpiece of biographical characterization and historical summary.

His eulogy of Marcus A. Hanna, at the Memorial Services in the United States Senate, is eminently just in characterization, and generous in appreciation. When Oliver Cromwell sat for a portrait to a great artist, who suggested that he might omit a mole that blemished the great man's face, the Lord Protector of the Commonwealth of England replied "Paint me as I am." Foraker did as Hanna would have had him do, he drew Mark Hanna as he was, and no finer tribute has been paid to a deceased statesman in modern times.

The same measure of praise may be accorded his address before the United States Circuit Court of Springfield, Illinois, last October, on the Life, Character and Public Services of Salmon P. Chase. It also is a model of its kind, moreover it possesses a new and great historical value that adds to its permanent value. Foraker is intensely practical. He rides, has hobbies and he has no fads. Always a student and having a rational and thoroughly intelligent appreciation of good literature, art, music and the drama, he is yet not a virtuoso nor a dilettante ;

but he is a walking encyclopedia of facts pertaining to the political, economic, and social history of his country, and in this respect he is perhaps, the best equipped man in public life today—a fact that accounts for his wonderful readiness and skill as a debater.

The Senator's manner is always frank, cordial and winning. He is never affected, or distant ; he never poses, and he has but little patience with stupidity, pompous pretense, or cautious timidity. He has convictions with reference to every matter of public import, or private concern that interests him, and he has always the courage of his convictions.

The Republican National Convention of 1908 is, as time is reckoned in the political world, yet in the far future ; yet the people, even now anxiously scan the horizon for the coming man, and the figure of Senator Foraker looms large upon it. It seems certain that the next presidential nominee of his party will not be a dark horse or an accident, but one known to the people for his positive qualities, and convictions, and his demonstrated ability to do things, and do them promptly.

No man whose name has yet been mentioned in connection with the presidency in 1908 has better defined his position on all public questions than has Joseph Benson Foraker ; the people know where he stands and what he stands for. Moreover his training in public life has made him familiar in an unusual degree with the powers, prerogatives and functions of the three great co-ordinate branches of the government.

If called to the presidency, it is more than probable that the youthful veteran of 1865 will be the last of the Civil war soldiers to hold that high office.



# OTWAY CURRY MORROW

1854—1903.

## A Successful Business Man.

**M**ANY YOUNG men of Hillsboro and Highland county have been remarkably successful in other towns and cities, in far-away states and countries, but the subject of this sketch—Otway C. Morrow—achieved business success in perhaps a more difficult field—the town in which he was brought up. He was the oldest of the family of Mr. and Mrs. W. A. Morrow. He was named by his parents for the poet Otway Curry, in whose home they visited a short time before the birth of their son. He is remembered by his schoolmates as a tall, slender, delicate boy, who passed successfully through the grades of our public schools, completing his studies under that master instructor, Professor Lewis McKibben. A bright, ambitious boy, he began his business life as a clerk in the queensware store of "Uncle Ben" Conard, with whom he remained for a considerable time, until he entered the queensware store of Capt. J. M. Hiestand, commencing then a business association that continued through much of his life. Here he mastered the details of the crockery business and became fitted for a more lucrative position with the H. F. West Bros. Co. importers and jobbers, in Cincinnati. After serving for a time in the retail department he became a traveling salesman for the firm. When the wholesale grocery was established by Captain J. M. Hiestand and M. McKeehan, knowing the business ability of

Otway C. Morrow, they induced him to return to Hillsboro to become secretary and treasurer of the new business which was destined to become a large and successful enterprise. In this position he continued, contributing much to the success of the firm, until compelled by failing health to retire. He was also a member of the firm of Morrow Bros., a Director of the Merchants' National Bank, and a Knight Templar. Otway Curry Morrow's life though short, was, in many ways, ideal and beautiful. He made money rapidly—not to hoard, but to enjoy—not to spend on self, but to give to his family every thing possible to contribute to their happiness.

In the varied relations of life, as son, brother husband and father he was greatly beloved.

As a citizen, he was liberal and progressive. As a successful man he was ever ready to extend a helping hand to other young men who might need help and encouragement. Beginning at the bottom of the ladder, by his own efforts he reached among the highest business positions in his native town.

His career was cut short by death while in the midst of his years and of life's activities. His business career affords a bright example of what may be achieved by a young man even "In his own country and among his own kindred."



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RAILWAY RATE LEGISLATION.



SPEECH

OF

HON. J. B. FORAKER,  
OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

WEDNESDAY, FEBRUARY 28, 1906.



WASHINGTON.

1906.



SPEECH  
OF  
HON. J. B. FORAKER,

*Wednesday, February 28, 1906.*

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REGULATION OF RAILROAD RATES.

Mr. FORAKER. Mr. President, I ask that what is commonly known as the "railroad rate bill" be laid before the Senate.

The VICE-PRESIDENT. The bill will be read by its title.

The SECRETARY. A bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

Mr. FORAKER. Mr. President, this proposed rate legislation raises some of the most important questions we have had to deal with since the civil war. It is so contrary to the spirit of our institutions and of such drastic and revolutionary character that, if not in its immediate effect, at least as a precedent, the consequences are likely to be most unusual and far-reaching. In view of these facts I make no apology for taking the time of the Senate to speak at length upon the subject, although upon this occasion I shall confine myself chiefly to the legal questions arising. I do not speak for anybody else, only for myself.

It may be helpful, as a sort of preface, to briefly sketch the development of our railroad system, indicate the present situation, and make some general observations that have no reference to any particular bill or any particular plan that has been proposed, but which have application to the general proposition to confer the rate-making power on the Interstate Commerce Commission.

Speaking in this way, railroad building in this country commenced about 1830. Its beginning was like that which we are now witnessing as to interurban electric railroads. At the beginning all railroad companies were organized under the State laws, and, as a rule, to build only short intra-State lines. The principal cities were first connected. The less important connections followed. Branches, spurs, and lateral lines came later. In that early period the different railroads were so separate and distinct in their organization and operation, and considered themselves such competitors of each other, that they resisted all suggestions of cooperation or of common use of tracks and cars. They went so far, in some instances, as to construct their tracks of different gauge, for the purpose, among others, of making it impossible for the cars of one line to pass over the tracks of any other line. In that day there were no through routes for either passengers or freight. To travel by rail from St. Louis, Chicago, Detroit, Cincinnati, Columbus, or Cleveland to New York involved repeated changes of cars.

The railroad business of the country continued upon these lines of separability and individual corporate action with but

very little, if any, consolidation until the civil war, when the necessity for the prompt transportation over long distances of troops and supplies demonstrated the advisability and necessity of through lines and harmonious systems with accompanying cooperation in management. Then commenced in a general way the wiser policy of connecting lines and operating them in harmony and for the better accommodation of their patrons. Finally there came, as an authority and encouragement for this new policy, the Act of Congress of June 15, 1866, which provided:

That every railroad company in the United States whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its road, boats, bridges, and ferries all passengers, troops, Government supplies, mails, freight, and property on their way from one State to another, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination. (R. S., sec. 5258.)

Under the protection and impetus given by this legal sanction the policy of cooperation rapidly developed, and although the period following the civil war was one of declining values until the resumption of specie payments, the construction of railroads rapidly increased, particularly in the Western States, into which the tides of population were pouring. During this period there was not only a constantly increasing demand for united and cooperative and interdependent relations, which led to the expenditure of many millions of dollars to reconstruct roads according to a standard gauge and reequip them to correspond, but there was also a universal demand for new roads and new lines of roads. New settlements brought new demands, and the rapid growth of population, towns, cities, and industries gave promise of such increasing and widespread prosperity that railroad building was in many instances unduly stimulated. In consequence, roads were built not only where there was immediate necessity, with fairly remunerative returns upon capital invested, but they were in many instances improvidently or prematurely built, and as a result there were in such instances for years less than fair returns, while in many cases there were no returns, but only losses for the investors. This rapid construction, spreading over the whole country, in all directions, but much of it unremunerative, led to the fiercest competition. Each road struggled not only to develop business on its own lines, but, by reducing rates, to carry the products of its own patrons to the most distant markets possible, invading new territory wherever they could. This brought about a conflict of interest in both the origination of business and in the finding of markets for that business. Roads that were built prematurely, or built improvidently, seeking for business sufficient to pay operating expenses and fixed charges, resorted to every method that competition could suggest to control patronage. In this behalf not only low long-distance rates but secret rebates, preferences, and discriminations of almost every character were resorted to. Many roads failed to get sufficient business and passed into the hands of receivers and were reorganized, some of them repeatedly.

The situation became so unsatisfactory that finally Congress passed the Interstate Commerce Act of February, 1887. That law, reenforced by a number of amendatory and supplementary statutes, has been in force ever since. The Interstate Commerce Commission, by it provided, has rendered much valuable service. Through the operation of these statutes, under the administration of this board, many of the evils originally complained

of leading to the enactment of the statutes have been remedied. It is commonly conceded that the railroad situation in the United States is better to-day, measured by the efficiency of its service, the cost of that service, and the treatment of shippers and passengers in the rendition of that service, than it has ever been before, notwithstanding there are many evils remaining that should be in some suitable manner provided against.

In the meanwhile the railroad business of the country has grown to enormous proportions. From the last annual report of the Interstate Commerce Commission it appears that the total railroad-track mileage amounts to about 212,000 miles; that the equipment of the same amounts to 46,743 locomotives, 1,798,561 cars, and that on account of these properties there have been issued in the aggregate almost \$14,000,000,000 of bonds and stocks, which are held almost altogether in this country, the owners consisting of thousands of individuals, in addition to savings banks, trust companies, insurance companies, and other kinds of institutions whose stockholders, numbering into the millions, are thus interested in these securities. It further appears from this report of the Interstate Commerce Commission that there are about 1,300,000 individuals, officers, agents, and employees on the pay rolls of these companies, to whom these railroads pay out annually in salaries and wages about \$800,000,000. It is further shown by this report that these roads carried the equivalent last year of more than two billion passengers the distance of one mile, and that the freight was the equivalent of the carriage for one mile of 174,522,089,577 tons; that the passengers were carried at the rate of about two cents per mile, and the freight at the average rate of .78 of a cent per ton mile; that the gross earnings aggregated almost \$2,000,000,000; while their operating expenses amounted in round figures to \$1,338,000,000; that the net earnings amounted in round figures to \$636,000,000.

These figures show the enormous, almost incomprehensible aggregate of values invested in railroad properties, and the tremendous, far-reaching character of the business of these carriers; the great number of persons immediately employed in connection therewith, and that there are millions of people not immediately connected with the railroads who are interested in their prosperity as holders of their securities and otherwise.

It is not to be wondered at that the upbuilding of such great interests should have been attended with many abuses and evil practices. It would be strange if it had not been. Rather the wonder is that these abuses and evil practices have not been greater than they have been. It would be strange, indeed, if there were not now, notwithstanding the improvements in the railroad situation, evil practices and abuses still remaining for which a remedy should be provided.

These evils are generally speaking of three classes—excessive rates, rebates, and discriminations.

#### EXCESSIVE RATES.

Of these, excessive rates are the least serious. Taking the whole country over the general average for the transportation of freight per ton per mile is less than it is in any other country. There has been some advance during the last five years, owing largely to the increased cost of labor and general operating expenses, but the average cost at this time is shown by the last report of the Interstate Commission to be, as we have seen,



only 0.78 of a cent per ton mile, which is less than one-third of what it was twenty-five years ago and materially less than it is in any other country of the world. While all this is true there are, nevertheless, some instances, perhaps many in the aggregate, where rates in and of themselves are excessive, and yet, comparatively, these are but few and unimportant. This is shown by the testimony of all who have spoken on the subject. The Interstate Commerce Commissioners in their annual reports have repeatedly stated in effect what they said in their report for 1893, that "extortionate charges are seldom the subject of complaint" and that "rates as a whole are low enough."

Mr. Clements, a member of the Interstate Commerce Commission, testified before the Senate Committee on Interstate Commerce, page 2237, volume 4. "The Commission has repeatedly asserted, and, I think, established by its official statistics, that, taken as a whole, the American rates are reasonably low, particularly upon the bulk of low-grade raw materials."

Mr. Fifer, another member of the Commission, testified before the Interstate Commerce Committee of the Senate, at page 3349, as follows: "I want to add in closing that I do not believe, except in some instances where I have stated, that the railroad rates throughout this country are excessively high at all. I have never believed that, and neither do I believe there would be, or ought to be, any great disturbance of these rates, whatever powers the Commission might be invested with."

On this subject President Roosevelt said in his remarks to the railroad employees who called upon him at the White House in November, 1905, to protest against this proposed legislation, on the ground that they feared it might prejudice them by putting their wages in jeopardy: "There has been comparatively little complaint to me of the railroad rates being, as a whole, too high."

Numerous other witnesses might be cited to this same general effect, but it is sufficient to say that all witnesses—shippers, railroad men, and others—without regard to whether they favored the proposition to confer the rate-making power on the Interstate Commerce Commission or were opposed, testified in substantial concurrence with the quotations made.

Nevertheless there should be some prompt and effective remedy provided by the law against excessive rates to whatever extent they may be indulged in and wherever they may be found.

#### REBATES.

A more serious class of evils, because more prejudicial in their consequences and results, are rebates. They are granted under many forms and guises, and include not only money payments, but all kinds of discriminations between shippers, such as undue allowances for terminal charges, elevator charges, refrigerator charges, icing charges, and private cars, false weights, improper classification, under billing, and many others too numerous to mention. The practice of giving rebates was a result of sharp competition between roads for business. At one time almost, if not quite, every road in the country indulged in the practice. Shippers who secured such preferences had an unjust advantage over their competitors, and the railroads that granted them suffered in the loss of revenues. The strongest and most prosperous railroads, although, like the others, granting these rebates, were always, as a rule, anxious to put a stop to the practice. In that behalf many traffic agreements

and arrangements, of one kind and another, were entered into, including many others that were known as pooling arrangements. All these arrangements and agreements proved ineffectual to a greater or less extent. The pooling arrangements were more nearly observed than any others, but they were unfortunately named, and because they prevented, in some measure at least, free and active competition they were always unpopular. In consequence they were prohibited by the interstate-commerce act of 1887. Subsequent to that statute traffic agreements and arrangements were chiefly relied upon. They were in effect simply agreements between competing roads as to what were regarded as reasonable schedules of rates, coupled with the further agreement to maintain the same.

But the Supreme Court of the United States in what is known as the Trans-Missouri case, reported in volume 166, page 290, U. S. Reports, and the Joint Traffic case, reported in 171 U. S. Reports, 576, held that these traffic arrangements were in violation of the Sherman anti-trust law, which, until that litigation was commenced, was not generally understood to apply to railroads; they being fully regulated, as it was thought, by the Interstate Commerce Act. The prohibition against pooling and the invalidity, as established by these decisions, of traffic agreements and arrangements left the roads without any adequate remedy against the practice of rebates, which each road felt compelled, in justice to itself, to indulge in because its competitor did; the weak roads to get business, the strong roads to hold it. Very largely on this account the tremendous consolidations of railroad properties resulted which have occurred during the last five or six years. These consolidations have been made until practically the entire railroad system of the United States has been brought under the control of some six or seven general systems, such as the Pennsylvania, the Vanderbilts, the Rock Island, etc. The effect of these consolidations upon rebates and discriminations as to persons and places was no doubt to restrict them somewhat, but the practices continued to such an extent, and with such consequent dissatisfaction on the part of shippers and railroads alike, that the Congress, to provide an efficient remedy against them enacted, February 19, 1903, what is known as the Elkins law.

#### THE ELKINS LAW.

The general scope, character, purpose, and salutary effect of this law are set forth fully by the Interstate Commerce Commission, in its Seventeenth Annual Report, dated December 15, 1903, from which I quote as follows:

Its provisions are mainly designed to prevent or more effectually reach those infractions of law, like the payment of rebates and kindred practices, which are classed as misdemeanors.

In the first place, the recent amendment makes the railway corporation itself liable to prosecution in all cases where its officers and agents are liable under the former law. Such officers and agents continue to be liable as heretofore, but this liability is now extended to the corporation which they represent. This change in the law corrects a defect which has always been a source of embarrassment to the Commission, as has been explained in previous reports, because it gave immunity to the principal and beneficiary of a guilty transaction. As a practical matter, it is believed that much benefit will result from the fact that proceedings can now be taken against the corporation.

The amended law has abolished the penalty of imprisonment, and the only punishment now provided is the imposition of fines. As the corporation can not be imprisoned or otherwise punished for misdemeanors than by money penalties, it was deemed expedient that no greater punishment be visited upon the offending officer or agent. The various arguments in favor of this change have been stated in

former reports and need not here be repeated. Whether the good results claimed by its advocates will be realized is by no means certain, but the present plan should doubtless be continued until its utility is further tested.

Without further reference to the changes effected by this amendatory legislation the Commission feels warranted in saying that its beneficial bearing became evident from the time of its passage. It has proved a wise and salutary enactment. It has corrected serious defects in the original law and greatly aided the attainment of some of the purposes for which that law was enacted. No one familiar with railway conditions can expect that rate cutting and other secret devices will immediately and wholly disappear, but there is basis for a confident belief that such offenses are no longer characteristic of railway operations. That they have greatly diminished is beyond doubt, and their recurrence to the extent formerly known is altogether unlikely. Indeed, it is believed that never before in the railroad history of this country have tariff rates been so well or so generally observed as they are at the present time.

In its present form the law appears to be about all that can be provided against rate cutting in the way of prohibitive and punitive legislation. Unless further experience discloses defects not now perceived, we do not anticipate the need of further amendments of the same character and designed to accomplish the same purpose.

In its Nineteenth Annual Report, under date of December 14, 1905, the Interstate Commerce Commission, at page 13, said:

#### REBATES AND THE ELKINS LAW.

In our annual report for 1903 we endeavored to explain the changes in the regulating statute effected by the Elkins law, so called, which was approved in the previous February, and made some favorable comments upon its operation. A similar opinion was expressed in the report made a year ago. Further experience, however, compels us to modify in some degree the hopeful expectations then entertained. Not only have various devices for evading the law been brought into use, but the actual payment of rebates as such has been here and there resumed. Instances of this kind have been established by convincing proof, on which prosecutions have been commenced and are now pending. More frequently the unjust preference is brought about by methods which may escape the penalties of the law, but which plainly operate to defeat its purpose. This does not imply any want of satisfaction with the act of 1903, which we regard as a most admirable measure, nor any belief that there is a general return to former practices, for the fact is undoubtedly otherwise; but it does mean that this type of evil has by no means disappeared and that it is liable to increase unless effectively restrained.

They might have added that all that was necessary to "effectively restrain" that "type of evil" was to enforce the law; and that the enforcement of the law was in the hands of themselves and the Department of Justice under the general control of the President, and that the law against murder, burglary, robbery, arson, and similar crimes is as good as man has been able to devise, but that nevertheless we still occasionally hear of the commission of these offenses.

But there is further testimony as to the character of the Elkins law.

Speaking on the subject of the Elkins law and rebates, Mr. E. P. Bacon, in his statement before the Senate Interstate Commerce Committee, said, January 16, 1905, page 16, et seq., vol. 1, Interstate Commerce Committee Hearings:

I consider that the difficulty of discrimination between individual shippers is fully met by the Elkins Act of 1903. I do not see how the English language can prohibit that in any clearer terms than is done by that act, nor do I see how any means of enforcing that prohibition beyond what is provided in that act can be formulated.

I wish to say, further, that while the Elkins Act of 1903 went as far, it seems to me, as it is possible to go, yet it remains with the Commission on its part, and the Department of Justice on its part, to enforce the provisions of that act. If they are thoroughly enforced, the evils of rebates will be effectually remedied.

I really regard rebates, however, as having been fully provided for by the Elkins Act of 1903, and with the addition of some machinery I believe that the practice of paying rebates can be wholly prevented.

Mr. Bacon further testified on this subject, page 1764, vol. 3, as follows:

The suppression of rebates is only one of the evils that have been aimed at by the commercial organizations. That evil has been considered by the associations as having been effectually remedied by the passage of the Elkins Act of 1903.

S. H. Cowan, esq., one of the leading and one of the ablest of all the advocates of the proposition to confer the rate-making power on the Interstate Commerce Commission, said, on the same subject in his testimony before the Senate Interstate Commerce Committee, at page 112, vol. 1:

Fortunately, rebates have stopped. It was a fortunate thing that they did, because it was made the means of discriminations between individuals where the neighbor can engage in the purchase and sale of articles because he gets lower rates.

Governor Cummins of Iowa said on this subject in his testimony before the Interstate Commerce Committee of the Senate, at page 2052-3, Vol. 3—

I do not think rebates and discriminations will ever disappear wholly, and I say frankly that I do not believe they will ever disappear so long as there is the element of competition. In business you may find some way of awarding favors, but I do not know of any way in which you can make the law more perfect on that point than it is now.

Commissioner Clements, of the Interstate Commerce Commission, said in his testimony before the Interstate Commerce Committee, page 3238, Vol. 4, speaking of the Elkins Act:

\* \* \* The Elkins Act is an act against all forbidden discriminations. \* \* \* We have said that it has had a tremendous effect in the diminution of these abuses. \* \* \* I have not a doubt in the world that the practice has been greatly diminished since the Elkins Act was passed.

Commissioner Knapp, chairman of the Interstate Commerce Commission, said in his testimony at page 3306, Vol. 4:

Now, if I might add one word as to the Elkins bill. A more effective and complete measure for its purpose has not come within my observation. It is invaluable.

Commissioner Prouty, of the Interstate Commerce Commission, testified, at page 2911, vol. 4: -

\* \* \* I think that the payment of rebates, as such, practically ceased when the Elkins bill went into effect, and it has only been resumed in aggravated instances, where apparently there could not be anything else done.

Numerous other citations might be made of similar statements from those who have been in such relation to railroad transportation as to enjoy special opportunities for knowing the nature and effect of the Elkins law as measured by its practical operation. In fact, all such witnesses who spoke on the subject testified to practically the same effect. This testimony, therefore, warrants the statement that the Elkins law has proven a most efficient measure for good, and that since its passage the practice of giving rebates and allowing discriminations among shippers has been largely discontinued, and that in so far as there are still violations of the statute of that character they can be broken up altogether by a mere enforcement of its provisions.

There has been no serious attempt to enforce this law to prevent discriminations as to localities, but a glance at its provisions will suffice to show that it is as broad, direct, explicit, and efficient to remedy that kind of an evil, wherever it may exist, as it has been found to be as to personal discriminations.



That the law has not been tested in this respect is not due to any fault of the law, but because no one has seen fit to invoke it.

This law has been upheld by the Supreme Court; first, in the case of the Missouri Pacific Railway Company *v.* United States, 289 U. S., 274, which was a case of alleged discrimination against a locality, commenced before the passage of the act. The court held that the proceedings there under consideration could be maintained under that statute and remanded the case for further proceeding.

It has been again upheld and its efficiency has been again strikingly demonstrated by the decision of the Supreme Court rendered only a few days ago in the Chesapeake and Ohio and New Haven coal case, where shipments at less than the published rates, under the guise of delivering coal that the Chesapeake and Ohio had sold to the New Haven, was enjoined immediately on the filing of the bill of complaint, the parties to that important controversy thus getting full relief almost from the very moment when they instituted their proceedings therefor.

All this was virtually admitted by the House Committee when they said in their report that no further legislation was necessary as to classification or relative rates, and that—

The law of to-day would be fairly satisfactory to all shippers if the spirit of fairness required by it had controlled the conduct of the carriers and the necessity for the proposed legislation is the result of and is made necessary by the misconduct of parties who are now most clamorous against additional restraint. If the carriers had in good faith accepted existing statutes and obeyed them there would have been no necessity for increasing the powers of the Commission or the enactment of new coercive measures.

It would have been nearer the truth if the committee had said that the law we now have is practically sufficient, if properly enforced, and that the fault, giving rise to conditions that are supposed to call for additional legislation, is not with the existing law, but with the officials who have not enforced it.

Such was the general situation when, in December, 1904, a demand arose for legislation giving the rate-making power to the Interstate Commerce Commission.

This demand had no place in the discussions of the political campaign of that year. It was not heard of until after the election.

It had been set forth a number of times in a general way in Democratic platforms, but it never commanded any serious attention until the President mentioned it in his annual message.

His popularity was so great and he so thoroughly commanded the confidence of all classes of people, that there was an immediate and very general acceptance of his recommendation.

This found expression in the Esch-Townsend bill, which passed the House at the last session almost unanimously, but failed to receive favorable consideration in the Senate.

The President renewed his recommendation in his last annual message, and the House has now, with even greater unanimity, passed the Hepburn bill.

#### HEPBURN BILL.

This bill increases the powers of the Commission in many respects, but I shall call attention to only its most important provisions of this character.

It makes the order of the Commission condemning a rate effective and thereby disposes of that rate, and then authorizes



the Commission to name a new rate and put it into operation in place of the condemned rate.

It authorizes the Commission to compel disagreeing railroads that have nothing in common except a physical connection to operate jointly as through routes on such rates and terms as it may impose.

It dispenses with jury trials in an important class of actions to recover money by providing a procedure that makes such trials impossible.

It imposes such extreme, unreasonable, and burdensome penalties as to probably invalidate the measure in that respect. It does not provide for a proper review by the courts of the orders of the Commission, but seeks to exclude the same.

There are other provisions that merit attention, but these raise all the questions I care to discuss at this time.

There is a common agreement that, although the railroad situation is vastly improved as compared with what it was only a few years ago, there are still, as there probably always will be, many evils to remedy, and to that end there should be some kind of appropriate legislation.

The principal difference of opinion is as to whether to accomplish this common purpose the legislation to be enacted should be of an amendatory character, such as to work out these remedies in the courts, where ordinary controversies are settled, or should be such as to confer the rate-making power to be exercised in the way provided by this bill on the Interstate Commerce Commission.

I believe in the court plan, as contradistinguished from the rate-making plan, not alone because it is, as I shall endeavor to show, much simpler, much more expeditious, much more efficient, and without expense to the shipper, but because, in addition to all that, it avoids all legal and constitutional questions, while the rate-making plan as set forth in this bill encounters a number of such questions that are of the most serious character, and some of them, in my judgment, fatal.

#### HAS CONGRESS THE POWER TO MAKE RATES?

In the first place, there arises at the very beginning of this controversy a most serious question as to the power of Congress to fix rates at all.

I know it has been assumed throughout all this discussion, as it has been in framing this bill, that we have that power and that it is unquestioned, and I know that there are many expressions to be found in the opinions of the Supreme Court of the United States that indicate a similar assumption on the part of that court, but nevertheless, the fact remains that the court has never yet passed on that question, and there are many eminent lawyers who are of the opinion that the court will hold, when it does decide that question, that Congress does not have that power.

Their reasoning seems to me to be sound, and the effect of it absolutely fatal to this entire scheme of legislation.

I am confirmed in this opinion by what the Supreme Court said in the Northern Securities case (193 U. S., 343), where, after discussing the nature of the combination there under consideration and the evil consequences thereof, Mr. Justice Harlan, speaking for the court, said:

Will it be said that Congress can meet such emergencies by prescribing the rates by which interstate carriers shall be governed in the transportation of freight and passengers? If Congress has the power to fix

such rates—and upon that question we express no opinion—it does not choose to exercise its power in that way or to that extent.

This statement, apparently not necessary to the disposition of that case, is, at least, an announcement to the legal profession that the question of the power of Congress to fix rates in the exercise of its power to regulate commerce is an open one, upon which the court will hear argument whenever that question may be presented. If it be an open question for the Supreme Court, so, too, is it an open question for the Senate, and no mere assumption should be allowed to dispose of it. We can not dispose of it by ignoring it. It must be argued in the courts, and I shall, therefore, discuss it now, at the beginning, where it properly belongs.

CONGRESS HAS NO POWER WITH RESPECT TO INTERSTATE COMMERCE EXCEPT THAT WHICH IS CONFERRED BY THE COMMERCE CLAUSE OF THE CONSTITUTION "TO REGULATE COMMERCE WITH FOREIGN NATIONS, AND AMONG THE SEVERAL STATES, AND WITH THE INDIAN TRIBES," AND TO ENACT ALL LEGISLATION NECESSARY TO GIVE EFFECT TO THIS POWER.

The controlling questions arising upon the construction of this clause are, first, what is "commerce," and, second, what is included in the power "to regulate?"

It was stated in *9 Wheaton*, 229—

Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulations.

Mr. Justice Curtis said in *Cooley v. The Board of Wardens*, 12 *Howard*, 316:

The power to regulate navigation is the power to prescribe rules in conformity with which navigation must be carried on. It extends to the persons who conduct it as well as to the instruments used.

Mr. Justice Field said in *Ferry Company v. Pennsylvania*, 114 *United States*, 203:

Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities. The power to regulate that commerce with foreign nations, vested in Congress, is the power to prescribe the rules by which it shall be governed. \* \* \* The power embraces within its control all the instrumentalities by which that commerce may be carried on.

Numerous other cases to the same effect might be cited.

This power to regulate commerce is, therefore, as to interstate commerce, a power to regulate railroads, because they are a facility for the transportation of passengers and freight, and this general power necessarily includes the power to regulate all cars or vehicles that may be used, together with all appliances, agencies, equipments, and conveniences that may be employed in the transportation of persons and property. It also embraces trains, crews, the conductors, brakemen, switchmen, engineers, firemen, train dispatchers, freight, and passenger depots.

In maritime commerce with foreign nations this power to regulate extends to and regulates the vessels employed, the officers and crews navigating such vessels, the places and conveniences for embarkation and landing, appliances and equipment for the protection, safety, and comfort of passengers, and the protection and safety of property on board, including the signals and rules to be observed by the carrier or his employees and servants in navigation, and others of like character and purpose.

These definitions of "commerce" are broad and numerous, but broad and numerous as they are no one has ever yet named the price at which the carrier should sell his service of transportation as included within the term. Apparently until recently it has not occurred to any one to contend that the charge for this service is either an article or an instrument or a facility of commerce falling within the power of Congress to regulate. The reason is plain. No one has included it because it is not commerce nor the subject of commerce.

It is an elementary proposition that the law, whether statutory or constitutional, is what the framers of it intended it should be, if that intention can be ascertained and be not in conflict with the language employed, and that it never is what, in the nature of things, it could not have been intended to be.

What, then, was the intent of the framers of the Constitution when they put the commerce clause into that instrument?

I shall not stop to gather this intent from the debates of the convention, from contemporaneous history, or from the restrictions imposed by the Constitution upon the exercise of this power, all of which show that rate making was not within the mind of the framers of the Constitution, but shall confine myself to adjudicated cases and recognized rules of construction.

In *Gibbons v. Ogden* (9 Wheat., 194) it was held, Chief Justice Marshall delivering the opinion of the court, that the word "commerce" as here used "is a unit, every part of which is included by the term." He further said in that opinion:

If this be the admitted meaning of the word in its application to foreign nations, it must carry the same meaning throughout the sentence and remain a unit, unless there be some plain intelligible cause which alters it. \* \* \* It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed.

In that same case Mr. Justice Johnson, concurring, at page 228, says:

The power to regulate foreign commerce is given in the same words, and in the same breath, as it were, with that over the commerce of the States. \* \* \* But the language which grants power as to one description of commerce grants it as to all.

In *Brown v. Huston* (114 U. S., 630), the court said:

The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations.

In the case of *Bowman v. Chicago, etc., Railway Company* (125 U. S., p. 482), the Supreme Court said:

The power conferred upon Congress to regulate commerce among the States is, indeed, contained in the same clause of the Constitution which confers upon it power to regulate commerce with foreign nations. The grant is conceived in the same terms and the two powers are undoubtedly of the same class and character and equally extensive.

In the case of *Crutcher v. Kentucky* (141 U. S., 47), the court said, pp. 57-58:

It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. \* \* \* And the same thing is exactly true with regard to interstate commerce as it is with regard to foreign commerce. No difference is perceivable between the two.

Mr. Justice Field said in *Pittsburg, etc., v. Bates* (156 U. S., 587):

The power to regulate commerce among the several States was granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations.

These authorities and others that might be cited establish the proposition that the power conferred upon the Congress as to interstate commerce is precisely the same as the power conferred upon Congress as to foreign commerce; neither more nor less.

This power, being identical in both cases, can not include the power to fix rates to be charged for transportation in the one unless also in the other. During the whole period of our country's existence no one down to this moment has ever claimed, or even suggested, either at the bar or on the bench, that it was the intention of the framers of the Constitution to confer on Congress by the commerce clause power to fix rates of compensation for the carriage of passengers or freight in foreign commerce. This is not alone, because the fixing of the carrier's compensation is not an article of commerce to be transported, not an element in the conduct of commerce that affects one way or another the question of safety or convenience in transportation of either life or property, but also because, aside from all questions about treaties and international relations generally, it would be utterly impracticable to exercise such a power with respect to international commerce. To-day but little of it is carried in ships of American registry. Less was carried when the Constitution was framed. Then as now the great bulk of international commerce was carried in ships and transports over which we could not have, if we so desired, any control whatever, except only while the same might be in our ports or within our jurisdiction. Whatever we might be able to do as to American ships we could not fix rates for foreign ships. The mere suggestion of the situation as to foreign commerce, how it is carried on, and the impossibility of intelligent action in prescribing rates of charges is enough to show that such an exercise of power was not and could not have been contemplated by the framers of the Constitution when they conferred on Congress the power to regulate foreign commerce.

But if this power was not conferred as to foreign commerce neither was it as to interstate commerce.

#### POWER OF THE STATES.

The assumption that Congress has the power to fix rates as a part of the power to regulate commerce is largely due to the fact, no doubt, that the States undeniably have this power. But the one does not follow from the other. The cases are wholly different. The States are complete sovereignties, except only as they have delegated their powers to the Federal Government. Among the powers they have reserved is the power to grant franchises to be a corporation. It is in this proprietary power to create corporations and give them authority to conduct a designated public business, such as that of a common carrier, that the power is included to prescribe as one of the terms and conditions of such franchises that the State shall have authority to fix rates and prescribe any terms and conditions it may see fit to impose. This power is unquestioned, because the corporation is the creation of the State. It gets its every right and privilege from the State and must, therefore, accept its life and its powers and rights and privileges, subject to such conditions as the State may see fit to impose.

The Federal Government has this power also with respect to the corporations that it creates, and it has exercised it with respect to the railroad corporations it has chartered; but it does not



derive this power from the commerce clause of the Constitution, which is a distinct and substantive power in and of itself, but from its general sovereign powers to promote the public welfare, establish post-roads, and provide for the national defense.

The advocates of rate-making legislation cite decisions of the Supreme Court to the effect that the power to regulate commerce conferred upon Congress by the commerce clause is a complete plenary power. This is true, but the complete power spoken of by the court is the power to regulate. The question remains whether or not within this complete power to regulate is included the power to fix rates of compensation for a carrier to charge for the service he is to render; and for the reason that it is not necessary to the execution of the power "to regulate," which goes properly no further than may be necessary to insure comfort, safety, and uniformity of regulations in the transportation of passengers and property, and because, in the nature of things, such a power can not be exercised and never could be exercised with respect to foreign commerce, it never could have been the intention of the framers of the Constitution that any such power should be conferred.

This does not leave us at the mercy of the carriers.

IN OTHER WORDS, IF IT BE HELD THAT THE CONGRESS HAS NO POWER TO FIX RATES, IT DOES NOT FOLLOW THAT THERE IS NO POWER IN THE GOVERNMENT TO CONTROL CHARGES TO BE MADE FOR THE TRANSPORTATION OF INTERSTATE COMMERCE.

It does not so follow, because all carriers of interstate commerce, like all other public utilities, are required, in the absence of any statutory provision, simply because of the common-law rule, to charge only reasonable and just rates, and to abstain from the practice of unreasonable discriminations between individual shippers and between independent localities. This rule of the common law has been universally recognized in this country, and has always been enforced in courts of equity when their jurisdiction in such cases has been invoked. If, therefore, there were no legislation on the subject, any shipper who might be charged an excessive rate could either pay and recover back in an action at law, in a law court of proper jurisdiction, or, to avoid a multiplicity of suits, he could exhibit his bill of complaint in a court of equity and secure relief by injunction. These propositions are elementary and do not need a citation of authorities for their support, but the books are full of cases in point.

In the case of *Scotfield v. Railroad Co.* (43 O. S., 571), in a most elaborate and carefully prepared opinion, the court reviews the leading cases on the subject and grants relief by injunction against a discrimination in rates. The discrimination in this case consisted in giving lower rates to the complainant's competitor on the ground that this competitor was entitled to it by reason of the larger shipments it was making.

In the case of *C. & O. R. Co. v. The People ex rel., etc.* (67 Ill., 11), the court says:

Another perfectly well-settled rule of the common law in regard to common carriers is that they shall not exercise any unjust and injurious discrimination between individuals in their rates of toll.

The supreme court of New Hampshire in *McDuffee v. Railroad* (57 N. H., 447), says at page 451:

The common and equal right is to reasonable transportation service for a reasonable compensation.

In *Railway Co. v. People* (56 Ill., 365), the court said:

The carrier is under obligation to receive and carry goods for all persons alike without injurious discrimination as to terms.



In *Chicago, etc., R. R. Co. v. Minnesota* (134 U. S., 418, 458), the court said:

The question of the reasonableness of a rate of charge for transportation by a railroad company involving, as it does, the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination.

In *Reagan v. Farmers' Loan and Trust Co.* (154 U. S.), at page 397, Mr. Justice Brewer, speaking for the court, says:

\* \* \* It has always been recognized that, if a carrier attempted to charge a shipper an unreasonable sum, the courts had jurisdiction to inquire into that matter and to award to the shipper any amount exacted from him in excess of a reasonable rate; and also in a reverse case to render judgment in favor of the carrier for the amount found to be a reasonable charge. The province of the courts is not changed, nor the limit of judicial inquiry altered, because the legislature instead of the carrier prescribes the rates.

In the case of *St. Louis and San Francisco Railway v. Gill* (156 U. S., 659), the court say:

Mr. Justice Miller, in his concurring opinion, said (in the case of *Chicago Railway Company v. Minnesota*, 134 U. S., 460): " \* \* \* Until the judiciary has been appealed to to declare the regulation made, whether by the legislature or by the Commission, voidable for unreasonableness, the tariff of rates so fixed is the law of the land and must be submitted to both by the carrier and the parties with whom he deals; that the proper, if not the only, mode of judicial relief against the tariff of rates established by the legislature or by its commission is by a bill in chancery asserting its unreasonable character and its conflict with the Constitution of the United States, and asking a decree of the court forbidding the corporation from exacting such fare as excessive, or establishing its rights to collect the rates as being within the limits of just compensation for the service rendered."

At page 666 of the above-cited case of *Railway Company v. Gill* (156 U. S.) the court say, again citing Mr. Justice Miller:

That the remedy for a tariff alleged to be unreasonable should be sought in a bill in equity or some equivalent proceeding, wherein the rights of the public, as well as of those of the company complaining, can be protected.

Numerous other citations might be made to show, as these do, that at common law, without any legislation, carriers are bound to transport for all who apply and that they are bound to charge only reasonable and just rates; and that they are not allowed to discriminate between shippers, commodities, or places, and that if they violate any of these duties they are liable for damages, in an action at law, at the suit of the aggrieved party; or he may, to avoid a multiplicity of suits, go into a court of equity and enjoin the carrier from such illegal charges or practices.

The framers of the Constitution did not, therefore, when they conferred on Congress the power to regulate interstate commerce without coupling with it the power to fix rates, leave shippers and travelers at the mercy of the carriers as to rates of charges, discriminations, or other wrongful practices, but, on the contrary, provided for them complete remedies in the system of courts for which they made provision.

BUT IF IT SHOULD BE THAT I AM MISTAKEN IN CLAIMING THAT THE POWER TO FIX RATES IS NOT COMPREHENDED WITHIN THE POWER TO REGULATE INTERSTATE COMMERCE, AND IT BE ASSUMED THAT CONGRESS HAS THE POWER TO FIX THE COMPENSATION OF A CARRIER FOR THE TRANSPORTATION HE SELLS, THEN THE FURTHER QUESTION ARISES, HOW SHALL CONGRESS EXERCISE THAT POWER?

Manifestly it is utterly impossible for Congress by statute to fix all the rates for interstate commerce. It must resort to some plan under which it can avail itself of the help of some kind of

board, commission, tribunal, or agency. But when it undertakes to do this it must take heed lest it undertake to do it in such a way as to delegate legislative authority and thus make its effort unconstitutional and unavailing, for it will be conceded that it is unconstitutional for Congress to delegate legislative power.

The chief provision of the Hepburn bill is that if after hearing a complaint the Commission—

be of opinion that any rates are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial,

it shall have power—

to determine and prescribe what will, in its judgment, be the just and reasonable and fairly remunerative rate or rates \* \* \* to be thereafter observed in such case as the maximum to be charged; \* \* \* and to make an order that the carrier shall cease and desist from such violation \* \* \* and shall not thereafter publish, demand, or collect any rate \* \* \* in excess of the maximum rate \* \* \* so prescribed. Such order shall go into effect thirty days after notice to the carrier.

THE FIRST QUESTION RAISED BY THIS PROVISION IS WHETHER OR NOT ALL THREE OF THE POWERS OF GOVERNMENT, LEGISLATIVE, JUDICIAL, AND EXECUTIVE, CAN BE CENTERED AND COMMINGLED IN A POLITICAL BOARD, CLAIMED TO BE ADMINISTRATIVE IN ITS CHARACTER.

This proposed legislation is radically different in this respect from the interstate-commerce act. By that act the Interstate Commerce Commission was empowered to hear complaints as to unreasonable rates, and if upon such hearing it concluded that the rates challenged were unreasonable, it could condemn them and order the railroad to desist from further charging the same; but the Commission had no power to enforce this order, and if the railroad refused to comply with it the only remedy was for the Commission to sue the road in court upon the order, to secure there, by judicial decree, its enforcement.

The hearing of the complaint and the making of a finding and order with respect to a rate were to that extent in the nature of a judicial procedure, but it was not judicial in fact, because the Commission had no authority or power to give effect to its order when it made one. The net result of what it was authorized to do was, to employ the language used in the Minnesota statute hereinafter quoted, to make a recommendation, for that is all its action amounted to. If the road did not see fit to accept the conclusion of the Commission, resort must be had to the courts, where alone judicial power could be exercised.

I mention this with particularity to show that the very able lawyers who, as members of the House of Representatives and the Senate, framed the interstate-commerce act of 1887, carefully avoided conferring on the Interstate Commerce Commission any kind of power except only executive power, for they stopped short of giving it judicial power by refusing to it authority and power to execute its orders and decrees, and they carefully refrained, as the Supreme Court held, from conferring upon it the legislative power of making a new rate to be substituted for a condemned rate. They gave only the one kind of power, because they were familiar with the rule, and by their action showed their respect for it, that two kinds of power, much less three kinds of power, could not be conferred on what they clearly intended should be in legal effect, as well as in practice, only a purely executive or administrative board. This Hepburn bill, however, gives to the Commission the additional power of executing its judgment of condemnation of a rate, which makes the power purely judicial, and then in addition

gives to the Commission the power to substitute a new rate for the one it has condemned and put out of existence, which is a purely legislative act.

In addition to these two new powers, judicial and legislative, never heretofore by any act conferred on the Interstate Commerce Commission, it is allowed by this Hepburn bill to retain all the executive power with which it was originally invested, with much more power of that character added.

That the bill is unconstitutional, because of this commingling of all these powers, appears beyond question.

Ours is a constitutional government. It is a fundamental proposition embodied in our organic law that there shall be three separate, independent, and coordinate departments of government, and that there shall not be any commingling of these powers in any one authority. It is, therefore, in contravention of our constitution to confer judicial powers upon the legislative department or to confer legislative powers upon the judicial department or to confer either of these powers upon the executive department.

Mr. Moody, the Attorney-General, in an opinion given to the chairman of the Senate Interstate Commerce Committee, under date of May 5, 1905, calls attention to the proposition, at page 12 of his opinion, in the following language:

A case arising under the laws of Kansas signally illustrates the principle that the nature of legislative and judicial powers is such that they can not be joined together and vested in the same body consistently with the theory which underlies the Constitution of the United States and those of many, if not all, the States.

Where the question arises it makes no difference whether the attempt of the legislature is to confer legislative power upon the judiciary or judicial power upon the legislature. The sole question is whether there is power to confer more than one of the powers upon the same body; to commingle them. If it be attempted, the effort is a nullity, because in conflict with the theory which underlies the organic law of our institutions.

In *Kilbourn v. Thompson* (103 U. S., 190) the Supreme Court said:

It is believed to be one of the chief merits of the American system of written constitutional law that all the powers intrusted to government, whether State or national, are divided into the three grand departments—the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.

The wisdom of this constitutional provision for the separation of these coordinate powers of government is strikingly manifested by the jumble attempted in this instance. The proposition would be alarming if its utter unconstitutionality were not as apparent as is its unreasonableness. It involves the general supervision by a political board, appointed by the President, of a business so tremendous as to be practically incomprehensible, and so complicated and difficult in its character as to be almost beyond the power of human intellect to master it, with authority to change rates with the stroke of a pen, affecting revenues to the extent of millions of dollars, and to make new regulations

of every character affecting the operation of more than 200,000 miles of railways, and affecting also, because of their relation to the railroads and their dependence upon them, almost every other kind of important business conducted throughout the length and breadth of the country; and in this behalf this board, to the judgment of which these vast interests are to be subjected, is authorized to be legislator, prosecutor, judge, jury, and marshal, all combined. In all the legislation of more than a century no such proposition has ever before been successfully presented to the American Congress. It would be an absolute disaster to the country if it should be successfully presented now, were it not that it is impossible for such a measure to receive the sanction of the courts, not alone because of the bad results which would follow from this particular legislation, but also because if such a commingling of power can be sustained as to legislation of this vastly important character it will be a precedent of such commanding force that it will be idle to ever hereafter in connection with legislation talk about three independent and coordinate departments of government, the powers of which are not to be blended and merged. It will be a fitting time, when we vote on this bill, to demonstrate that there are still three departments of government and that they are still, as our fathers intended, separate and independent as well as coordinate.

A SECOND QUESTION, EQUALLY FATAL TO THIS LEGISLATION, AT ONCE ARISES—WHETHER THE PROVISION QUOTED ABOVE, IF SUSTAINED, TO A DELEGATION OF LEGISLATIVE POWER.

The power conferred is "to determine and prescribe what will, in its judgment, be the just and reasonable and fairly remunerative rate \* \* \*" and then by proper order put it into operation.

"Just and reasonable and fairly remunerative" are indefinite terms.

Different minds might, and most probably would, reach widely different conclusions as to what they required in almost any given case. All any commission could do would be to act according to its best judgment, and that is just what the bill recognizes and requires, for its requirement is "to determine and prescribe what will, in its judgment, be" the proper rate, etc.

The effect of this provision can not be avoided by a juggle of words intended to show that the Commission does not fix any specific rate and put it into operation, but only that it names a rate which, "in its judgment," is a reasonable and just rate, and thereupon the law operates to give that judgment effect as a maximum rate, for the fact remains that it is the judgment of the Commission and not the judgment of Congress that prescribes the rate, and according to the best authorities that is fatal to the measure.

In *Dowling et al. v. Insurance Company*, 92 Wisconsin, page 63, a statute was held invalid because in the opinion of the court it delegated legislative power.

The court adopted the rule laid down by Judge Ranney in *1st Ohio State*, that the—

true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first can not be done; to the latter no valid objection can be made.



The statute under consideration in this Wisconsin case provided that the insurance commissioner should—

prepare, approve, and adopt and print the form in blank of a contract or policy of fire insurance, together with such provisions, agreements, or conditions as may be indorsed thereon or added thereto and form a part of such policy and contract, and such form shall, as near as the same can be made applicable, conform to the type and form of the New York standard fire insurance policy, so called and known.

The court held that this was a delegation of legislative power, and that it was therefore unconstitutional and void.

In discussing the question the court said, at page 71:

The act, in our judgment, wholly fails to provide definitely and clearly what the standard policy should contain, so that it would be put in use as a uniform policy required to take the place of all others, without the determination of the insurance commissioner in respect to matters involving the exercise of a legislative discretion that could not be delegated, and without which the act could not possibly be put in use as an act in conformity to which all fire insurance policies were required to be issued.

It will be noted that the statute, approximately at least, gave a standard by which the insurance commissioner was to be governed in preparing the form of policy to be adopted, for it provided that it should—

as near as the same can be made applicable, conform to the type and form of the New York standard fire-insurance policy.

The court say upon this point:

Evidently the conformity to "type and form" of the New York standard policy had reference to the form of that policy as embracing the substance of the provisions of the contract, and as to the size and kind of type to be used in printing the policy to be adopted. Had the commissioner wholly declined to prepare, approve, and adopt any form whatever, it would not have been possible to have carried into effect so imperfect or uncertain an enactment, or to transact business under it. Within the lines indicated, a discretion was reposed in the commissioner as to the form of the policy which embodied the substance of the contract, and which was to have the sanction and force of law. The effect clearly was to transfer to him bodily the legislative power of the State on that subject. Within the limits prescribed he was to prepare just such a policy or contract as, in his judgment and discretion, would meet the legal exigencies of the case, and no one could certainly predict what the result of his action might be.

In the case of *The State ex rel. Adams v. Burdge and others* (95 Wis., p. 390), the question before the court was whether or not a statute which undertook to authorize the State board of health, a purely administrative body, to make such regulations "as may in its judgment be necessary for the protection of the people" from contagious diseases, and give the power to designate what diseases "are dangerous or contagious to the public health," was obnoxious to the objection that it was a delegation of legislative power, and therefore unconstitutional and void, and the court held that it was.

The statute under consideration in this case authorized the board of health to make such regulations "as may, in its judgment, be necessary for the protection of the people" from contagious diseases, and gave them power to designate what diseases were contagious or dangerous to the public health. The court held that this statute was an unwarranted delegation of legislative power.

The court in this case again cites the rule laid down by Judge Ranney as drawing the true distinction between statutes that delegate legislative power and those which do not, and held the statute invalid because on its face it intrusted to the board of health the exercise of its judgment and discretion, which belonged only to the legislature.



In the case of *Clark v. Field* (143 U. S., 649), and again in the case of *Buttfield v. Stranahan* (192 U. S., 470)—the tea case—the Supreme Court sustained the statutes there under consideration enacted by Congress, which were attacked on the ground that they delegated legislative power, not by holding that it was competent for the Congress to delegate legislative power, but by so construing the statutes as to show that they did not delegate legislative power; that what the President was authorized to do under the McKinley tariff law was not legislative, but purely administrative, and what the board of experts and the Secretary of the Treasury were required to do, which was under consideration in the tea case, was likewise administrative and not legislative.

The Supreme Court in these cases, recognizing and announcing the rule that legislative power can not be delegated, found that the provisions of the statutes under consideration were such that no legislative discretion was left with the President in the one case or with the board of experts or the Secretary of the Treasury in the other.

In answer we are told by the advocates of this bill of the statutes under which the Postmaster-General and the Secretary of the Interior are invested with authority to decide various questions arising in their respective Departments, according to their judgment and discretion, which have no application whatever to the question under consideration, for the obvious reason that in all those instances the Government is dealing with its own and has a right to do so on its own terms and conditions.

So, too, they have cited as an authority for them what Chief Justice Waite said in the *Munn* case (94 U. S.), as follows:

With the fifth amendment in force, Congress, in 1820, conferred power upon the city of Washington to regulate the rates of wharfage at private wharves, the sweeping of chimneys, and to fix the rates of fees therefor, and the weight and quality of bread; and in 1848 to make all necessary regulations respecting hackney carriage and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers.

And so on, at length.

In citing this as an authority they overlook the fact that the conferring by the legislature of a State upon a municipality of such powers of local government as are enumerated in the statute quoted is an exception to the general rule as to the delegation of legislative authority. Cooley's *Constitutional Limitations*, sixth edition, page 226, says:

\* \* \* The legislature can not delegate its power to make laws; but fundamental as this maxim is, it is so qualified by the customs of race and by other maxims which regard local government, that the right of the legislature, in the entire absence of authorization or prohibition, to create town and other inferior municipal organizations, and to confer upon them the powers of local government, and especially of local taxation and the police regulation usual with such corporations, would always pass unchallenged. The legislature in these cases is not regarded as delegating its authority, because the regulation of such local affairs as are commonly left to local boards and officers is not understood to belong properly to the State.

Congress sustains the same relation to the city of Washington that a State does to the municipalities within its borders.

The essence of all these decisions is given in the case of *Field v. Clark*, page 693, where, as stating the true rule, they quote Judge Ranney, as the Wisconsin cases did, as follows:

The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first can not be done; to the latter no valid objection can be made.

I repeat this quotation to emphasize it.

This rule indicates the distinction running through all the well-considered cases on the subject of the delegation of legislative power. According to this rule the test is whether or not the party on whom the authority is conferred is intrusted with any discretion to make the law; if so, the statute is unconstitutional. If, on the other hand, no discretion be conferred, but only an administrative duty be enjoined, the statute is valid. Discretion may be allowed as to its execution, but none as to what the law shall be.

Applying this rule we see what must be the character of the legislation enacted by Congress conferring the rate-making power on the Interstate Commerce Commission, or any other tribunal, to make it valid, namely, that no discretion to make rates, according to its opinion or judgment, can be conferred, but standards or guides and tests must be prescribed to govern the action of the Commission. To illustrate, Congress may prescribe that rates shall not exceed so much per mile per passenger, or so much per ton per mile for freight, or that on roads making a net earning of so much per mile rates shall not exceed a maximum named, while on roads making less or greater earnings that maximum shall be varied to correspond. In such instances, with such standards by which to be governed, the action of the board of commissioners or the tribunal or agency selected will be purely administrative, because it will have nothing to do in order to arrive at the rate to be fixed beyond making a calculation and working out results and then naming them.

It has been contended that the Supreme Court of the United States has sustained State statutory provisions that did not conform to this rule authorizing State commissions to make rates within the States; and it is further pointed out in support of the right of Congress to confer the rate-making power on the Interstate Commerce Commission, that the Supreme Court in the Maximum Rate case, and in other cases, indulged in expression which indicate, although that question was not before the court, that it would sustain such legislation as is now proposed if it should be enacted.

It is true that the Supreme Court has upheld statutes enacted by the States conferring this power on State commissions or commissioners, and it is true that the Supreme Court did indulge in the Maximum Rate case, and perhaps in other cases, in the character of expressions referred to, but it is also true that the precise question now presented was not presented to the court in any of these cases. And it is also true that the Supreme Court of the United States has never yet upheld a State statute conferring power to make rates on a railroad commission or commissioner as to that particular point which did not make the power so conferred purely administrative in character, or which was not enacted by virtue of a constitutional provision that authorized such legislation.

The leading cases relied upon are what are known as the Granger cases, reported in 94th U. S., the Stone case, the Reagan case, the Minnesota case, and the Maximum Rate case.

The first of the Granger cases was that of *Munn v. The State of Illinois*, 94 U. S., 113. The question involved in that case was whether or not the legislature of Illinois could fix maximum rates of elevator charges. In that case the legislature had provided that the maximum charge for the storage and handling of grain, etc., should be 2 cents per bushel for the first thirty days, and additional specified charges for longer periods of time.

There was no question in this case as to the power of the legislature to delegate legislative authority.

The next case is that of the *Chicago, Burlington and Quincy Railroad Company v. The State of Iowa*, reported at page 155, 94th U. S. This case arose under "An act to establish reasonable maximum rates of charges for the transportation of freight and passengers on the different roads of Iowa," approved March 23, 1874.

A number of questions were involved in the case, but the particular question under consideration was not and could not have been one of them. The statute is found at page 61, Laws of Iowa, 1874, but the nature of the statute is set forth at page 163 of the opinion of the court, which was delivered by Mr. Chief Justice Waite, as follows:

The statute divides the railroads of the State into classes, according to business, and establishes a maximum of rates for each of the classes. It operates uniformly on each class and this is all the Constitution requires.

From this statement it appears that the commission provided for by the statute had only the administrative duty to perform of ascertaining to which class a particular railroad belonged and then applying the rates provided for that class. The classification was on the basis of net earnings, and maximum rates were named by the statute for each class on all articles shipped.

All this appears more fully from the following provisions of the statute:

All railroads in this State shall be classified according to the gross amount of their respective annual earnings within the State, per mile, for the preceding year, as follows: Class "A" shall include all railroads whose gross annual earnings, per mile, shall be four thousand dollars (\$4,000) or more. Class "B" shall include all railroads whose gross annual earnings, per mile, shall be three thousand dollars (\$3,000) or any sum in excess thereof less than four thousand dollars (\$4,000). Class "C" shall include all railroads whose gross annual earnings, per mile, shall be less than three thousand dollars (\$3,000).

SEC. 2. All railroad corporations, according to their classifications as herein prescribed, shall be limited to compensation per mile for the transportation of any person, with ordinary baggage not exceeding one hundred pounds in weight, as follows: Class "A" three cents; class "B," three and one-half cents; class "C," four cents: *Provided*, That no such corporation shall charge, demand, or receive any greater compensation per mile for the transportation of children twelve years of age or under, than the half rates above prescribed: *And provided also*, A charge of ten cents may be added to the fare of any passenger, when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train.

SEC. 3. The tariff rates established in the following schedule shall be considered the basis on which to compute the compensation for transporting freights, goods, merchandise, or property over any line of railroads within this State:

## Schedule of tariff rates.

Distances, in miles.	Merchandise, in cents, per hundred pounds.				Flour and meal, in cents, per barrel, per carload.	Salt, cement, plaster and stucco, in cents, per barrel, in lots of 25 barrels or over.	All grain (except wheat and mill stuffs, in cents, per 100 pounds, per carload.	Wheat, in cents, per 100 pounds, per carload.	Lumber, in dollars, per carload.	Horses and mules, in dollars, per carload.	Cattle and hogs, in dollars, per carload.	Sheep, in dollars, per carload, single deck.	Class A, in dollars, per carload.	Class B, in dollars, per carload.	Class C, in dollars, per carload.	Coal, in dollars and cents, per ton, per carload.
	First class.	Second class.	Third class.	Fourth class.												
1 and less than 2...	12.00	10.07	9.23	8.00	10.67	12.73	4.26	4.68	8.27	9.09	8.00	7.00	9.60	8.68	7.63	30
2 and less than 3...	12.50	11.05	9.63	8.20	10.89	12.99	4.35	4.78	8.44	9.35	8.24	7.20	9.87	8.95	7.93	37
3 and less than 4...	13.00	11.45	9.93	8.38	11.11	13.25	4.44	4.88	8.62	9.70	8.48	7.40	10.15	9.22	8.11	45
4 and less than 5...	13.50	11.85	10.23	8.60	11.33	13.51	4.53	4.98	8.80	10.05	8.72	7.60	10.43	9.49	8.41	52
5 and less than 6...	14.00	12.25	10.50	8.80	11.55	13.78	4.62	5.08	8.98	10.40	8.96	7.80	10.71	9.76	8.68	60
6 and less than 7...	14.40	12.56	10.73	8.90	11.77	14.01	4.70	5.17	9.15	10.68	9.20	7.95	10.99	10.03	8.92	62
7 and less than 8...	14.80	12.85	10.95	9.02	11.99	14.30	4.79	5.25	9.32	10.96	9.44	8.10	11.29	10.31	9.20	64
8 and less than 9...	15.20	13.18	11.16	9.14	12.21	14.56	4.86	5.36	9.49	11.20	9.68	8.25	11.58	10.59	9.48	66
9 and less than 10...	15.60	13.48	11.37	9.26	12.43	14.83	4.97	5.46	9.66	11.52	9.92	8.40	11.86	10.90	9.75	68
10 and less than 11...	16.00	13.80	11.59	9.38	12.65	15.09	5.06	5.56	9.83	11.80	10.16	8.55	12.14	11.15	10.02	70
11 and less than 12...	16.40	14.10	11.80	9.50	12.87	15.35	5.14	5.65	10.00	12.08	10.40	8.70	12.44	11.40	9.22	71
12 and less than 13...	16.80	14.40	12.00	9.61	13.09	15.61	5.23	5.75	10.17	12.36	10.64	8.85	12.73	11.67	9.38	72
13 and less than 14...	17.20	14.70	12.21	9.72	13.31	15.88	5.32	5.85	10.35	12.64	10.88	9.00	13.01	11.94	9.54	73
14 and less than 15...	17.60	15.01	12.42	9.83	13.53	16.14	5.41	5.95	10.52	12.92	11.12	9.15	13.31	12.22	9.70	74
15 and less than 16...	18.00	15.32	12.63	9.94	13.75	16.40	5.50	6.05	10.69	13.20	11.36	9.30	13.60	12.50	9.86	75
16 and less than 17...	18.40	15.61	12.83	10.05	13.97	16.66	5.58	6.14	10.86	13.48	11.60	9.45	13.88	12.77	10.02	76
17 and less than 18...	18.80	15.92	13.04	10.16	14.19	16.92	5.67	6.23	11.03	13.76	11.84	9.60	14.16	13.04	10.18	77
18 and less than 19...	19.20	16.23	13.25	10.27	14.41	17.10	5.76	6.33	11.20	14.04	12.08	9.75	14.46	13.31	10.34	78
19 and less than 20...	19.60	16.52	13.45	10.38	14.63	17.45	5.85	6.43	11.37	14.32	12.32	9.90	14.74	13.58	10.49	79



20 and less than 21	20.09	16.83	13.66	10.49	14.85	17.71	5.94	6.53	11.54	14.60	12.55	10.05	15.04	13.86	10.65	80
21 and less than 22	20.30	17.06	13.83	10.60	15.07	17.98	6.02	6.62	11.71	14.80	12.80	10.20	15.21	13.99	10.81	81
22 and less than 23	20.50	17.26	14.00	10.70	15.21	18.24	6.11	6.72	11.87	15.00	13.00	10.35	15.34	13.99	10.81	82
23 and less than 24	20.90	17.53	14.17	10.80	15.51	18.50	6.20	6.82	12.01	15.20	13.04	10.50	15.91	14.11	10.97	83
24 and less than 25	21.10	17.75	14.33	10.90	15.73	18.76	6.29	6.91	12.23	15.40	13.16	10.65	16.19	14.26	11.20	84
25 and less than 26	21.50	18.00	14.50	11.00	15.95	19.02	6.38	7.01	12.40	15.60	13.28	10.80	16.48	14.49	11.45	85
26 and less than 27	21.80	18.25	14.67	11.10	16.17	19.29	6.46	7.10	12.57	15.80	13.40	10.95	16.73	14.62	11.61	86
27 and less than 28	22.10	18.46	14.83	11.20	16.39	19.55	6.55	7.20	12.74	16.00	13.52	11.10	17.01	14.75	11.77	87
28 and less than 29	22.40	18.70	15.00	11.30	16.61	19.81	6.64	7.30	12.91	16.20	13.64	11.25	17.29	14.87	11.93	88
29 and less than 30	22.70	18.94	15.17	11.40	16.83	20.06	6.73	7.40	13.08	16.40	13.76	11.40	17.54	14.99	12.08	89
30 and less than 31	23.00	19.16	15.33	11.50	17.05	20.34	6.82	7.50	13.25	16.60	13.88	11.50	17.75	15.12	12.19	90
31 and less than 32	23.20	19.33	15.45	11.60	17.27	20.60	6.90	7.50	13.43	16.80	14.00	11.60	17.98	15.25	12.30	91
32 and less than 33	23.40	19.50	15.60	11.70	17.49	20.86	6.99	7.68	13.60	17.00	14.12	11.70	18.22	15.36	12.40	92
33 and less than 34	23.60	19.67	15.73	11.80	17.71	21.13	7.08	7.78	13.77	17.20	14.24	11.80	18.46	15.50	12.51	93
34 and less than 35	23.80	19.83	15.86	11.90	17.93	21.39	7.17	7.88	13.91	17.40	14.36	11.90	18.72	15.62	12.61	94
35 and less than 36	24.00	20.00	16.00	12.00	18.15	21.65	7.26	7.98	14.11	17.60	14.48	12.00	18.96	15.75	12.72	95
36 and less than 37	24.20	20.17	16.13	12.10	18.37	21.91	7.34	8.07	14.28	17.80	14.60	12.10	19.29	15.88	12.83	96
37 and less than 38	24.40	20.33	16.26	12.20	18.59	22.17	7.43	8.17	14.45	18.00	14.72	12.20	19.45	16.09	12.93	97
38 and less than 39	24.60	20.50	16.40	12.30	18.81	22.44	7.52	8.27	14.62	18.20	14.84	12.30	19.70	16.13	13.04	98
39 and less than 40	24.80	20.67	16.53	12.40	19.03	22.70	7.61	8.37	14.80	18.40	14.96	12.40	19.94	16.25	13.14	99
40 and less than 41	25.00	20.83	16.66	12.50	19.25	22.96	7.70	8.47	14.96	18.60	15.08	12.50	20.19	16.38	13.25	100
41 and less than 42	25.20	21.00	16.80	12.60	19.47	23.23	7.78	8.56	15.14	18.80	15.20	12.60	20.43	16.50	13.35	101
42 and less than 43	25.40	21.17	16.93	12.70	19.69	23.49	7.87	8.66	15.31	19.00	15.32	12.70	20.68	16.62	13.45	102
43 and less than 44	25.60	21.33	17.06	12.80	19.91	23.75	7.96	8.75	15.48	19.20	15.44	12.80	20.92	16.76	13.55	103
44 and less than 45	25.80	21.50	17.20	12.90	20.13	24.01	8.05	8.85	15.65	19.40	15.56	12.90	21.18	16.88	13.65	104
45 and less than 46	26.00	21.67	17.33	13.00	20.35	24.28	8.14	8.95	15.82	19.60	15.68	13.00	21.42	17.01	13.77	105
46 and less than 47	26.20	21.83	17.46	13.10	20.57	24.54	8.22	9.04	15.99	19.80	15.80	13.10	21.67	17.14	13.87	106
47 and less than 48	26.40	22.00	17.60	13.20	20.79	24.80	8.31	9.14	16.16	20.00	15.92	13.20	21.91	17.26	13.99	107
48 and less than 49	26.60	22.17	17.73	13.30	21.01	25.06	8.40	9.24	16.33	20.20	16.04	13.30	22.17	17.39	14.10	108
49 and less than 50	26.80	22.33	17.86	13.40	21.23	25.33	8.49	9.33	16.50	20.40	16.16	13.40	22.41	17.51	14.21	109
50 and less than 51	27.00	22.50	18.00	13.50	21.45	25.59	8.58	9.43	16.67	20.60	16.28	13.50	22.63	17.64	14.32	110



Then follow 14 similar pages of this schedule of tariff rates showing the cost of transportation according to the table given, up to a distance of 376 miles. And then follow many pages, all a part of the statute, on which are set forth a basis for computing the tariff charges on every kind of an article that the legislature could think of as likely to be transported by railroad carriers in the State of Iowa, of which the following is a sample:

#### CLASSIFICATION OF FREIGHTS.

SEC. 5. The following classification of freights, explanatory of the preceding schedules, shall be taken and held to be the classification in force in this State under the provision[s] of this act:

#### EXPLANATION OF CHARACTERS.

The class as given opposite each article, 1, 2, 3, 4, stands for first, second, third, and fourth classes, respectively;  $1\frac{1}{2}$  for once and a half first class, and D 1 for double first class.

Articles not enumerated will be classed with similar articles.

Acids	D 1
25 carboys, or over	1
Carloads	4
Agricultural implements in carloads	Class A
Less than carloads as follows:	
Fanning mills, sulky horserakes, and similar light and bulky machines	D 1
Cultivators, corn planters, harrows, shovel plows, and shearing machines	$1\frac{1}{2}$
Iron cultivators, wooden horserakes, reapers, mowers, harvesting machines, plows, seed drills, and feed cutters	1
Cultivators, corn planters, shovel plows, and fanning mills, when knocked down and taken apart	1
Sulky horserakes, knocked down and teeth taken out	1
Iron corn shellers	1
Threshers, one, at half-car rate.	
Plows, knocked down and boxed	4
Alcohol	1
Alcohol, 10 barrels or more	2
Alcohol, 20 barrels or over	4
Ale, 20 barrels or over	4
Ale, less than 20 barrels	3
Ale, in glass, packed	1
Allspice	3
Almonds, in sacks	1
Almonds, in barrels or boxes	2
Alum	3
Ammunition, fixed. (See Government supplies.)	
Antimony, crude	1
Anvils	4
Apple butter or sauce	2
Apples, dried	2
Apples, dried, 50 barrels or over	4
Apples, green, in bulk in carloads, same as potatoes.	
Apples, green, 40 barrels or more	4
Apples, green, less than 40 barrels	3
Apples, in carloads of 120 barrels or more; carload, flour rates.	
Ashes, pot, pearl, and soda	4
Ash boilers or kettles, large and heavy	4
Asphaltum	4
Axes	3
Ax handles, boxed	3
Ax handles, in bundles	2
Axle grease	3
Axle grease, 50 cases or over	4
Axle, iron	3
Axle, wooden	2
Bacon, loose or in bags	2
Bacon, loose, carloads	4
Bacon, packed	4
Baggging	2
Bags, in bales or bundles	2
Baking powders	2

Baking powders, 100 boxes or more	3
Balance wheels, 8 feet or less in diameter	1
Bandboxes	D 1
Bandboxes, boxed	1 1/2
Barilla	3
Bark mills	2
Bark, tanners'	3
Bark, tanners', in carloads	Class C
Barley, pearl	3
Barrels, empty, in carloads	Class C
Barrels, empty	1
Beer barrels	2
Half barrels	2
Quarter barrels	2
Eighth barrels	2
Baskets	D 1
Baskets, carloads	Class A
Bath brick	4
Bath tubs	D 1
Batting	D 1
Bay rum	1
Beans, dry	3
Beans, dry, carload	4
Beans, castor	3
Beans, castor, carload	4
Bedcords, in bundles	1
Bed springs, in bundles	1
Bedsteads, rough	2
Bedsteads, finished in pieces	1
Beef, carloads	Class C
Beef, packed	4
Beef, dried, loose	2
Beehives	D 1
Beer, carloads	Class A
Beer, same as ale.	
Beeswax	2
Bells	2
Bellows	1
Belting, rubber or leather	2
Benzine, same as coal oil.	
Benzole, same as coal oil.	
Berries, except cranberries	1
Bird cages, boxed	D 1
Bitters, in glass, boxed	1
100 boxes or over	2
Black lead, in barrels or boxes	3
Blacking, shoe	3
Bleaching salts or powders	4
Blankets	1
Blue vitriol	2
Blinds	1
Boats	D 1
Boats, when flat car required	Class A
Boiler flues	2
Boilers, 30 feet long or over	1 1/2
Less than 20 feet	1
Boiler felting	2
Boiler plates	4
Bonnets, boxed	D 1
Books	1
Boots and shoes, boxed and strapped	1
Boots and shoes, not strapped	1 1/2
Boots and shoes in trunks	1 1/2
Borax	2
Bottles, in boxes	3
Bottles, in casks	3
Boxes, empty	1
Boxes, empty, carload	Class A
Bran. (See Mill stuffs.)	
Brass, in sheets, rods, and rivets	2
Brass vessels	2
Brass castings	2
Brass, scrap	2
Bread	1
Bread, in carloads	4
Brick	4

Brick, celamon, in carloads-----	Class C
Brick, fire-----	4
Brick, fire, in carloads-----	Class C
Brick for stove linings, loose-----	1
Brick for stove linings, in boxes or barrels-----	4
Brimstone, in boxes or kegs-----	2
Brimstone, in barrels or hogsheads-----	4
Brittania ware-----	1
Broom corn, in bales-----	1
Carloads-----	4
Broom-corn presses-----	1½
Broom-corn seed-----	2
Brooms, in bales or bundles-----	1
Broom handles-----	2
Broom handles, carloads-----	Class A
Brushes, loose-----	D 1
Brushes, packed in boxes-----	1
Buckets-----	1
Burial cases-----	1
Burning fluid-----	1
Burr blocks-----	4
Butchers' blocks-----	2
Butter, in crocks-----	1
Butter, in kegs or boxes-----	2
Butter, 10,000 pounds or over-----	3
Cabinet ware. (See Furniture.)-----	
Cabinet organs-----	1
Caissons-----	2
Cable chains-----	4
Camphene, in wood-----	1½
Candles-----	2
Candles, 2,000 pounds or more-----	4
Canvas-----	1
Canvas, roofing-----	2
Canes-----	1
Cane mills-----	2

More might be quoted from this statute to advantage, but the quotations made are sufficient to show its character and that the duties of the officials charged with the execution of the law were purely administrative, involving no discretion whatever.

The next case of this series was that of *Peik v. The Chicago and Northwestern Railroad Company*, reported at page 164, 94th U. S.

The nature of the statute under which this case arose is shown at page 166, where occurs the following:

Chapter 273 classifies railroads in the State, fixes the limit of fares for the transportation of any person, classifies freights and the maximum rates therefor, and prescribes certain penalties and forfeitures for receiving any greater rate or compensation for carrying freight or passengers than the act provides. It appoints railroad commissioners and prescribes their duties and powers.

The full text of the statute on this point is as follows:

SECTION 1. All railroads in the State of Wisconsin are hereby divided into three classes, to be known as Class A, Class B, and Class C. Class A shall include all railroads or parts of railroads in the State of Wisconsin now owned, operated, managed or leased either by the Milwaukee and St. Paul Railway Company, the Chicago and Northwestern Railway Company, or the Western Union Railway Company. Class B shall include all railroads or parts of railroads owned, operated, managed, or leased by the Wisconsin Central Railway Company, the Green Bay and Minnesota Railway Company, or the West Wisconsin Railway Company. Class C shall include all other railroads or parts of railroads in said State.

SEC. 2. Any individual, company, or corporation owning, operating, managing, or leasing any railroad or part of a railroad in the several classifications, as herein prescribed, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage not exceeding 100 pounds in weight, as follows: Class A, 3 cents; Class B, 3½ cents; Class C, 4 cents: *Provided*, That no such individual, company, or corporation shall charge, demand, or receive any greater compensation per mile for the transportation of children of the age of

12 years or under than one-half of the rate above prescribed: *And provided further*, That the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SEC. 3. All freights hereafter transported upon any railroad or part of a railroad in this State are hereby divided into four general classes, to be designated as first, second, third, and fourth classes, and into seven special classes, to be designated as Class D, E, F, G, H, I, and J. Class D shall comprise all grain in carloads; Class E shall comprise flour in lots of 50 barrels or more, and lime in lots of 24 barrels or more; Class F shall comprise salt in lots of 60 barrels or more, and cement, water lime, and stucco in lots of 24 barrels or more; Class G shall comprise lumber, lath, and shingles in carloads; Class H shall comprise live stock in carloads; Class I shall comprise agricultural implements, furniture, and wagons; Class J shall comprise coal, brick, sand, stone, and heavy fourth-class articles in carloads; and in addition to the several articles in the said special classes shall be added other articles as and in the manner hereinafter prescribed, except into Classes D, E, G, and H; and all articles not above enumerated are (or) subsequently set into said classes, as hereinafter provided, shall be placed in and belong to the four general classes, to be classified by the railroad commissioners hereinafter provided to be appointed, as said articles were classified by the Milwaukee and St. Paul Railway, which classification went into effect on the 15th day of June, 1872.

These quotations are sufficient to show that the Wisconsin statute was, so far as the principle is concerned, modeled after the Iowa statute.

In legal effect they were identical in character, and no question as to the delegation of legislative power was involved in either case, for the legislature had in both instances denied the use of judgment or discretion, and provided a rule which left nothing to be done to ascertain what the rate should be which the Commission was to prescribe, except only to ascertain to what class the road belonged, which was a purely administrative matter. Having ascertained to what class the road belonged, it remained only to apply the rate prescribed by the statute.

In the case of the *Railway Co. v. Minnesota* (134 U. S., 418), the statute under consideration is printed in the margin of the report of the case and the general nature of it is sufficiently shown by the following provisions:

Paragraph (c), section 7, page 423, 134th U. S., reads as follows:

That in case the Commission shall at any time find that any part of the tariffs of rates, fares, charges, or classifications so filed and published, as heretofore provided, are in any respect unequal or unreasonable, it shall have the power and is hereby authorized and directed to compel any common carrier to change the same and adopt such rate, fare, charge, or classification as said Commission shall declare to be equal and reasonable. To which end the Commission shall, in writing, inform such common carrier in what respect such tariffs of rates, fares, charges, or classifications are unequal and unreasonable, and shall recommend what tariffs shall be substituted therefor.

(f) makes it the duty of the common carrier to publish the rates so recommended and to put them in operation, and the railroad failing to do so, then the Commission shall do so.

(g) provides that—

if any common carrier shall refuse or neglect to carry out such recommendation made and published by such Commission, such common carrier shall be subject to a writ of mandamus, to be issued by any judge of the Supreme Court, or of any of the district courts of this State, upon application of the Commission to compel compliance with the requirements of this section and with the recommendation of the Commission, and failure to comply with the requirements of said writ of mandamus shall be punishable as and for contempt, and the said Commission, as complainants, may also apply to any judge for a writ of injunction against such common carrier from receiving or transporting property or passengers within this State until such common carrier shall have complied with the requirements of this section and the recommendation of said Commission, etc.



In other words, the authority of the Commission was to recommend new rates to be substituted for condemned rates, but it had no power to put such rates into operation except by an appeal to the courts for a mandamus or injunction.

The case of *Stone v. The Farmers' Loan and Trust Company* (116 U. S., 307), arose under a statute which created a railroad commission and empowered it in certain contingencies to establish, determine, and revise railroad rates and charges, but that statute undertook to make the work of the commission administrative, and perhaps did so, for the language it employed was "in revising or establishing any and every tariff of charges, it shall be the duty of said commission to take into consideration the nature of the services to be performed and the entire business of such railroad, together with its earnings from the passenger and other traffic, and so revise such tariffs as to allow a fair and just return on the value of such railroad, its appurtenances, and equipments."

But whether this language was sufficient to make the work of the commission merely administrative is immaterial so far as the decision of the Supreme Court in that case is concerned, for, assuming that the question was involved in the case, it was not expressly passed on by the Supreme Court of the United States.

The question upon which that case was mainly argued and disposed of was as to whether or not the statute under consideration was in conflict with the charter rights of the railroad company. The supreme court of Mississippi held that it was not, and the Supreme Court of the United States affirmed that opinion, confining itself in its opinion almost exclusively to the discussion of that question. But the Supreme Court of the United States was careful to say in upholding the statute in the last paragraph of the syllabus: "The provisions of the statute of Mississippi of March 11, 1884, creating a railroad commission, are not so inconsistent and uncertain as to necessarily render the entire act void on its face."

Both the supreme court of Mississippi and the Supreme Court of the United States called attention in their opinions to the fact that the statute had not yet gone into operation, and that there might arise questions under it when put into operation that they would not undertake to decide in advance. What all this may have meant we can only conjecture, but it is fair to assume that the very able lawyers who were familiar with that decision, and who framed the constitution of Mississippi, adopted in 1890, deemed it necessary, in order to make such legislation valid beyond question, to provide as they did in that constitution for the creation of a commission, and the conferring upon it by the legislature of the powers which under the statute it was authorized to exercise.

This provision of the constitution of Mississippi is as follows:

SECTION 186. The legislature shall pass laws to prevent abuses, unjust discrimination, and extortion in all charges of express, telephone, sleeping-car, telegraph, and railroad companies, and shall enact laws for the supervision of railroads, express, telephone, telegraph, sleeping-car companies, and other common carriers in this State, by commission or otherwise, and shall provide adequate penalties to the extent, if necessary for that purpose, of forfeiture of their franchises.

Very similar comments can be made as to the Reagan case, reported in 154 U. S., 362.



The case was not disposed of upon a question of delegation of legislative power, but aside from that fact the constitution had been so amended as to authorize the creation of the commission and the exercise by it of the power involved, and for that reason the question, as here presented, could not arise.

The following is the amendment referred to:

#### CONSTITUTION OF TEXAS.

Amendment of 1890: The legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties, and to (the) further accomplishment of these objects and purposes may provide and establish all requisite means and agencies in this State with such powers as may be deemed adequate and advisable.

In recognition of the fact that general power to make rates can not be conferred on commissions, the different States have been in recent years amending their constitutions so as to give such authority.

The States of California, Illinois, Kentucky, Louisiana, Mississippi, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, and Washington have carefully provided in their constitutions that railroad commissions shall be in some cases, and may be in others, created with power to fix rates and prescribe regulations governing railroads operating within their respective territories, or that the legislature may prescribe maximum rates and provide for the enforcement of them, and establish regulations and enforce obedience to them by commissions or such other means or agencies as the legislature may see fit to prescribe.

In some States this has not been done, but no case has yet come to the Supreme Court of the United States involving the right of a State commission to fix rates for roads within the State where such duty has not been made administrative, as in Iowa and Wisconsin, or where the statute has not been, like that in Minnesota, where it only authorized the commission to recommend rates; or where the commission has not been provided for by the constitution of the State, and where it has not been provided by the constitution that such commission when created should exercise the power involved.

When it is remembered that the States, except only as to the powers by them delegated, are complete sovereignties, and when it is remembered that they have complete sovereign power as to rates and railroads within their borders, there can not be any question of the right of the State, acting through its legislature, when all legislative power is conferred upon the legislature, or acting through commissions, where the constitution provides for the creation of a commission and for the exercise by it of legislative power, as in the States of Mississippi, Texas, Louisiana, Virginia, and other States, to make rates, and to prescribe regulations, and to do, generally speaking, all the things they have been authorized in such States to do; but the case is wholly different as to the Federal Government, which has no power, except that which is delegated and such as is necessary to be exercised to give effect to that which is delegated.

The Constitution of the United States expressly provides that all legislative power shall be vested in Congress, and it further provides that the Congress shall have power to regulate interstate commerce. There is here no division of legislative power,

nor is there any authority to the Congress to delegate to any commission, board, or tribunal, or agency any part of its legislative power. The legislative power conferred upon Congress can not, therefore, be exercised by any authority except only the Congress itself, and the only question remaining is whether or not the conferring of the power to make rates upon a commission or tribunal is a delegation of that power, and that question must be determined by the terms of the statute conferring the power. If Congress has the power to fix rates, a commission can be created and it can be utilized in the fixing of rates. But it can be utilized only under some such statute as those enacted by the legislatures of Iowa and Wisconsin, when, in 1873 and 1874, they passed their respective statutes, classifying the railroads according to earnings, and providing that the officials chosen to execute them should, by computation, taking the classification as a basis, determine what statutory rates should apply. That was administrative.

The Congress could also utilize the Commission in the fixing of rates if it should see fit to resort to the policy of a mileage basis. But for the Congress to simply declare what is already the law, for it is only declaratory of the rule at common law, that rates shall be reasonable and just, and then create a commission and empower that commission to say what in its judgment a rate shall be, is, most clearly, to confer legislative power, because the rate to be fixed is the law to be enacted, and that is to be determined by the discretion of the Commission instead of the discretion of the Congress. And not only is it a delegation of legislative power, but it is a delegation of all the power the Congress has on the subject, for Congress can not constitutionally make a rate that is not a reasonable and just rate. If extortionate the courts would enjoin at the suit of the shipper, and if confiscatory they would enjoin at the suit of the carrier—in both cases on the ground that property was being taken without due process of law.

BUT IF THIS BILL BE ENACTED AND BE UPHOLD, NOTWITHSTANDING THESE OBJECTIONS, THEN ANOTHER SERIOUS LEGAL QUESTION ARISES. BY THE SIXTH PARAGRAPH OF THE NINTH SECTION OF ARTICLE I OF THE CONSTITUTION IT IS PROVIDED THAT "NO PREFERENCE SHALL BE GIVEN BY ANY REGULATION OF COMMERCE OR REVENUE TO THE PORTS OF ONE STATE OVER THOSE OF ANOTHER. \* \* \*"

For many years what are known as differentials have been allowed as between the important Atlantic coast ports of entry. Taking New York as the standard, a differential has been allowed in favor of Philadelphia of 2 cents per hundred weight on all freight for export carried by the railroads to that port, while a differential of 3 cents has been allowed as compared with New York in favor of Baltimore and Newport News, while the same rate is allowed to Boston for export, although the domestic rate ranges from 7 cents, first class, to 2 cents on sixth class, domestic. Still larger differentials have been and are allowed in favor of the ports of New Orleans and Galveston. The fixing of rates being in the hands of the carriers, they have been at liberty to make these differentials by agreement. They had their origin in an endeavor to express, in the differentials agreed upon, the disadvantages of the respective ports of entry as compared with New York. These disadvantages consisted not only of differences in the length of haul, but also differences in the adequacy of the harbors and in the extent to which the

respective ports were furnished with shipping facilities and accommodation for ocean carriage. These differentials were the subject of agreement not only on the part of the railroads, but also on the part of the cities named, acting through their respective boards of trade, chambers of commerce, and other commercial bodies and organizations.

These differentials were from the beginning the subject of much dispute and controversy, and much study and labor have been devoted to their equitable adjustment.

As early as January, 1882, Hon. Allen G. Thurman, Hon. E. B. Washburn, and Hon. Thomas M. Cooley were selected by the Trunk Line roads to act as an advisory commission to hear evidence, fully investigate, and make a report as to what differentials should be allowed as between the cities of New York, Boston, Philadelphia, and Baltimore upon freight carried eastwardly from Chicago and common points to these ports and from these ports to Chicago and other western points. They made a very thorough investigation, and wrote a very comprehensive report, which is found at page 1243, volume 2, of the Hearings of the Senate Interstate Commerce Committee. Their conclusion is found at page 1268, and I quote from it as follows:

It only remains for us to state that no evidence has been offered before us that the existing differentials are unjust, or that they operate to the prejudice of either of the Atlantic seaboard cities. Differential rates have come into existence under the operation of competitive forces; they bear the same relation to relative distance and relative cost of service; they recognize, as we think, the relative advantages of the several seaports, and they are subordinate to the great principle which compels the carriers of property competing between the same points and offering equal facilities to their customers to make the same rates. We therefore can not advise their being disturbed.

This commission is known as the Thurman Commission. It simply approved and affirmed the differentials already established. These differentials as to these Atlantic seaboard cities were continued until the year 1904, practically without change, although there were some changes in conditions that caused much dissatisfaction with them. Finally this dissatisfaction was expressed by the commercial organizations of Boston, New York, Philadelphia, and Baltimore in an application to the Interstate Commerce Commission "asking that it examine the whole subject of differential rates to and from these four cities, and determine whether the present differentials should be abolished, or, if retained, modified." In response to this application the Commission undertook the work as requested. They made a thorough examination of the whole subject, heard the statements of witnesses, arguments of counsel, and wrote an elaborate report and opinion, published as "No. 746, In the Matter of Differential Freight Rates to and from North Atlantic Ports, Decided April 27, 1905." Their conclusion is found at page 60 of their report and opinion. To state it in a word, they slightly modified the differentials and continued them. In reaching this conclusion they say, at page 62:

\* \* \* a fair differential is one which would give to these several ports the traffic to which they are entitled \* \* \* New York urges that its facilities upon the ocean must not be interfered with, while Baltimore and Philadelphia assert with equal positiveness that they must not be deprived of their advantages upon the land \* \* \*.

The ideal condition would be the establishment of such rates that enterprise at either port in the way of improvement in service or facilities might be rewarded by increased business and that there might

exist that healthy struggle of locality against locality which is the best security for proper commercial development. This is justly demanded by the interests of the communities involved.

In disposing of this question the interests of the carriers which serve these communities should be none the less kept in view. If, again, it can be properly done, these rates should be so adjusted that this competitive traffic will be fairly distributed between the different lines of railway which serve these ports. Each one of these four cities is reached by two or more great railway systems. The prosperity of these cities and systems can not be separated. The ability of a railroad to adequately discharge its duty for a reasonable charge depends upon the business which it can obtain, and no one of these systems should be deprived of its fair portion of this enormous export traffic. The purpose of these differentials from the first has been to distribute this business between the different carriers, and we said in our former report that this was not improper unless the means used were improper.

It should be noted that this discussion is confined entirely to the four ports, Boston, New York, Philadelphia, and Baltimore. While others are directly affected by these differentials, they have not been represented upon this hearing, and are not considered, except in so far as it may be necessary to keep in mind the effect of our conclusions here upon conditions elsewhere.

No fact has been more persistently urged upon our attention than the location of Baltimore and Philadelphia, as compared with New York and Boston, in point of distance. Baltimore is 111 miles, and Philadelphia 90 miles, nearer than New York to Chicago. The greater part of the traffic to which these differentials apply does not originate at Chicago, but we have seen that Chicago may be taken as a representative point of origin without injustice to New York. This difference in distance, if there were no competitive conditions, would justify a lower rate to Philadelphia, and a still lower rate to Baltimore.

These differentials have undoubtedly been established in the past with a view almost entirely to their influence upon the movement of export business.

\* \* \* \* \*

This traffic, in point of fact, originates at a great number of interior points, and reaches numerous foreign destinations, but we may assume, for the purpose of illustration, that it all comes from Chicago and all goes to Liverpool. It is apparent that it may be transported between these points by any of the four ports in question. The distance by rail is somewhat shorter to Baltimore and Philadelphia than to Boston and New York. Upon the other hand, the water distance is somewhat less from Boston and New York than from Philadelphia and Baltimore. The entire through distance does not greatly vary. In other words, this traffic is fairly competitive, and rates ought, therefore, to be so adjusted that rival routes can fairly compete for it.

Apply for a moment the rule suggested by Baltimore and Philadelphia to the movement of this traffic. The domestic rate to Baltimore is 3 cents lower and to Philadelphia 2 cents lower than to New York. The domestic rate to Boston is 2 cents higher than to New York upon low-grade freight, and considerably more upon the higher classes. Now, what would be the result if carriers were compelled to charge their domestic rates upon export traffic? Plainly it would shut up the port of Boston. This fact has been obvious from the first, and it has always been conceded that export rail rates to Boston might be lower than domestic rates and not higher than export rates to New York. \* \* \*

The real question is, on what basis shall rates be equalized through the various ports? New York and Boston insist that the through rates should be made the same in amount by all the ports. The through rate is made by adding together the inland-rail rate from the interior to the port of export and the water rate from the port of export to the foreign destination. These localities contend that if the water rate from a given port is higher, the rail rate to that port may be correspondingly lower, but only sufficiently lower to make the through rate the same. They further contend that water rates are in fact substantially the same from Baltimore and Philadelphia as from Boston and New York, and that therefore the inland-rail rates to those ports should also be the same. Baltimore and Philadelphia urge that there are certain advantages at New York and Boston in the water route which upon the same through rate would attract traffic to those ports at their expense, and they urge that these advantages shall also be equalized so that not the through rate but the advantages of transportation through the several ports shall be made equal. \* \* \* To accomplish this result Boston is allowed to charge a lower export rate than its domestic rate. New York is also permitted, in some instances,



to apply a lower differential to export than is fixed for domestic traffic. Now, when New York is allowed to reduce this differential on export traffic there is taken away from Baltimore a part of its natural advantages for the benefit of New York in order that New York may compete for this traffic. But just as Baltimore has an advantage in distance, so New York has certain advantages in ocean facilities. If, now, Baltimore is required to sacrifice its superiority upon the land for the benefit of New York, why should not New York be required to give up some portion of its superiority on the water for the benefit of Baltimore?

We do not wish to be understood as saying that this principle should be extended to the making of rail rates between competing lines. It may be that in such case the rate by every line should be the same, and that each line should sustain whatever disability it has. If in this case it were possible to definitely establish the same through rate by all these ports, if it ever had been possible to do so, the advisability of such an adjustment would deserve serious consideration. It is, however, impossible to apply that rule in fact. The ocean rate from every port is continually fluctuating and is seldom the same for two days in succession. It even varies from hour to hour. The rate may be higher from Baltimore to-day and from New York to-morrow. It can not, therefore, be determined what inland differential would produce equal rates through all the ports.

In view of the fact that Baltimore and Philadelphia have natural advantages in location, that Boston and New York have certain natural advantages in the way of ocean facilities, that it is impossible to make and maintain the same rate through all the ports, we think the true inquiry in adjusting this differential is, what will equalize the advantages of transportation through these various ports. What part of the advantage which Baltimore and Philadelphia enjoy on the score of the inland haul shall they be allowed to retain to compensate them for their disadvantage in the water haul.

The most important factor in determining the route is undoubtedly the rate.

It was said in testimony \* \* \* that a difference of from one-fourth to one-eighth of a cent a bushel will determine the port by which grain shall be exported. Other traffic is not equally sensitive, but it must follow with respect to this low-grade freight that the through rate by all lines should be substantially the same. There are, however, other considerations. The item of insurance, quicker and more reliable service, more frequent sailings, the ability to reach a greater number of ports, superior banking facilities, and better storage facilities all influence the movement of this traffic, and in all these respects New York is superior to its competitors. The elements which enter into the problem are so various and so complex that it is manifestly impossible by any *a priori* process of reasoning to determine what inland differential will equalize all these advantages and disadvantages.

From the quotations made, and others that might be made, it is clearly shown that the purpose of these differentials is to measure as nearly as may be the respective advantages and disadvantages of the ports of entry named; and what is true as to New York, Boston, Philadelphia, and Baltimore is equally true as to Newport News, New Orleans, Galveston, and other ports of entry, and the purpose of these differentials has no relation, except indirectly and incidentally, to railroad rates, but have reference solely and directly to their effect on the respective ports of entry.

Railroads are not restrained by any law or constitutional provision from making agreements of this character. That they are of the highest importance not only to the ports with respect to which they are made, but to the whole country, is universally conceded. Without these differentials there would be a natural tendency to concentrate exports at the port having the best harbor and shipping facilities, provided it could be substantially as easily reached by rail from the interior. The differentials are, therefore, essential to the maintenance of the system of diffusion and distribution that is now in force as to our export traffic, and which is of such vast importance not only to the



railroads and these different cities, but to the whole country. But to maintain these differentials means that cities are not to have the benefit of their natural advantages, for they are to be offset or overcome by the differences in rates that are agreed upon. In other words, Philadelphia and Baltimore are to be preferred as ports of entry, to the extent of the differentials agreed upon, to New York, and Boston is to be preferred to the extent that she shall have a lower export rate from the inland than her domestic rate, and enough lower to put her on an equality with New York; and this purpose of these differentials is to give the cities they favor a direct preference as to export business to the amount of their respective differentials for the express purpose of putting them on an equality with New York. To withdraw these differentials would be, as the Commission say, to close up the port of Boston. The same remark might be made in such a contingency as to New Orleans and Galveston, to which ports a growing volume of exports has been diverted because of the equality of opportunity for such business secured to them by the differentials they enjoy.

The entire history and purpose of these differentials show that they are not indirect nor incidental preferences for the ports they favor, but that they are direct and intentional for the express purpose of overcoming the results of natural advantages and natural competition. Preferences are their principal purpose, not an incident. The cities themselves recognize this, for it was the cities and not the railroads that asked for the recent hearing before the Interstate Commerce Commissioners, sitting as arbitrators, when they had occasion to deliver the opinion from which I have quoted.

Now, as to the application of all this. If Congress undertake to exercise its power to regulate interstate commerce, it must exercise that power subject to all the restrictions and limitations imposed upon it by the Constitution. It must, therefore, avoid, in the exercise of this power to regulate, coming in conflict with any other constitutional provision that has application to it.

In the case of *Pennsylvania v. The Wheeling and Belmont Bridge Co.*, 18 Howard's Reports, 421, the Supreme Court held that the *incidental* results of the construction of the bridge at Wheeling, by which interstate commerce on the Ohio River was affected, did not constitute a violation of the constitutional provision above quoted that "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another," for the reason that the prohibition applied only to cases of *direct* preferences. The suggestion of the Attorney-General that these differentials, which have direct reference to the export trade, and, therefore, to the respective points they favor, would be merely incidental to the execution of a law requiring reasonable, just, and impartial rates, is refuted by the facts; and the further suggestion that if the contrary rule be adopted the law now in force must be held to be in violation of this provision does not help the matter. It does not help the matter because under the statute now in force there is no restriction upon the rate-making power, except only that rates in and of themselves, without reference to ports of entry, shall be reasonable and just, and no question of unreasonableness or discrimination has been or can be raised under the law as it now stands.

But, recurring to the original suggestion, it is not an argument to say that differentials would be only a legitimate incident to the making of reasonable, just, and impartial rates. That is mere assertion. Besides it conflicts with one of the great purposes of those seeking the kind of legislation that has been proposed, to secure to each locality its own particular rightful advantages of location, and thus avoid the preferring in the making of rates of one locality to the prejudice of another. That, with discrimination between individual shippers, is the very essence of this entire movement. Unless that purpose be accomplished there will be widespread and positive disappointment among the advocates of such legislation. They commonly denounce the present practice by which localities are denied what they term their rightful advantages, and are put on an equality with other localities that are at a disadvantage as compared with them, as directly and unjustly and grossly discriminatory. The advocates of rate legislation know this and yet they have carefully omitted every provision from the Hepburn bill that has been proposed that would apply to this evil—if it be an evil, as they loudly proclaim.

It seeks thus to avoid the question by entirely ignoring differentials in connection with its expressed purposes. This is open confession that Congress has no power, acting directly by commission or otherwise, to observe these differentials in the making or fixing of rates. Thus the authors of that bill acknowledge that the whole system of differentials is founded on a purpose to give direct preference to the ports respectively favored at the expense of other ports, and, therefore, if done by Congress, in contravention of the constitutional provision under consideration.

But the bill does not escape the trouble by ignoring it. It is rather only another case of the ostrich hiding its head in the sand. If the Commission is to make rates to be substituted for challenged rates that it condemns, the question will at once arise and will have to be met, for with respect to these differentials there is most acute dissatisfaction, and in the very nature of things it must be expected that this dissatisfaction will promptly manifest itself. In such contingency the Commission must act. What its action must of necessity be appears from its opinion already quoted from. It says:

\* \* \* When New York is allowed to reduce this differential on export traffic there is taken away from Baltimore a part of its natural advantages for the benefit of New York, in order that New York may compete for this traffic. \* \* \*

If this be true, as it is, so, too, is the converse of the proposition equally true. To deny the differential "plainly would shut up the port of Boston."

"We have endeavored," they say, "to find some fundamental principle by the application of which this dispute might be laid at rest, but entirely without success. \* \* \* There is no just principle which would compel this company (the Pennsylvania), against its will, to apply at New York the same rate as at Philadelphia when the cost of rendering that service is distinctly greater. It might as a matter of competition see fit to do so, but it could not in justice be compelled to."

Again they say:

If in this case it were possible to definitely establish the same through rate by all these ports, if it ever had been possible to do so, the advisability of such an adjustment would deserve serious consideration. It is, however, impossible to apply that rule in fact.

From these quotations it appears that the Commission clearly understands that the sole purpose of the differentials is to interfere with and affect the results of natural competition, thus directly and intentionally aiding one city to the corresponding prejudice of others. This is something carriers, unrestrained by law, are at liberty to do, and something that is of great advantage to the whole country, but which the Congress is expressly prohibited from doing, because it shall give no preference whatever as between the ports of different States.

But if we invest the Interstate Commerce Commission with the power to make rates it must exercise that power subject to this prohibition of the Constitution that there shall be no preference for the ports of one State over those of another. The whole system of differentials must in consequence be abandoned. As a result each city will then be entitled to its natural advantages, not only of location but of railroad and shipping facilities and every other kind of advantage it may possess. As a practical result New York will at once have over Boston, Philadelphia, Baltimore, Newport News, and all the other competing ports of entry, respectively, the advantages measured by their respective differentials.

The great importance of the observance of this rule is shown by the following statement of the Commission as above quoted. The Commission says:

The most important factor in determining the route is undoubtedly the rate. \* \* \* A difference of from one-fourth to one-eighth of a cent per bushel will determine the port by which the grain shall be exported.

As a consequence, not only would the port of Boston be closed up, but all the other ports would be at least most seriously affected. The general business that could be taken as well to one port as another under present conditions would then concentrate at the most favored port.

This is not disputed, and can not be, certainly not by the Commission itself, for its own language supports the contention. This is made more plain by Commissioner Clements, who, in his dissenting opinion, speaking to another point, says:

\* \* \* The facts disclosed do not, in my judgment, justify the conclusions reached, for the reason that I believe they do violence to the great principle of competition, which the Congress and the Supreme Court have so jealously and consistently nourished as one of the fundamental rights of the people. In declaring as between competing lines and competing ports what differentials shall govern, assuming that they will govern, we hamper competition, and by this regulation of distribution effect in reality a division of territory, a division of traffic, and a division of earnings, which in substance and effect tend to defeat, not only the purpose of the antitrust act against the restraint of trade, but the pooling provision of the Interstate Commerce act, with the enforcement of which the Commission is charged.

It follows that the effect of conferring the rate-making power on the Commission will be, in the event of a differential rate being challenged, to raise a question that can not be decided except against the continuance of these differential rates, and, as a consequence, the whole system of differentials as to ports of entry will have to be abandoned. What the effect of this will be can better be imagined than described. That it means disruption of existing conditions with attendant confusion and dissatisfaction so great that it can not well be exaggerated, no one who is informed can doubt.

## THROUGH ROUTES AND JOINT RATES.

The Interstate Commerce Act of February 4, 1887, provided for the supervision by the Interstate Commerce Commission of through routes and joint rates, but the provision of that act with respect to through routes and joint rates applied by its terms only to the common carriers "subject to the provisions of the act."

The provisions of that act applied to common carriers "engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or territory of the United States, or the District of Columbia, to any other State or Territory of the United States," etc.

In other words, the provisions of that act as to through routes and joint rates were limited in their application to carriers engaged in transportation wholly by railroad and transportation partly by railroads and partly by water, which carriers were "under a common control, management, or arrangement for a continuous carriage or shipment," etc. The provisions of the statute applied when the carriers, if they were separately owned and entirely distinct from and independent of each other, themselves established a through route and made an agreement as to the terms and conditions upon which freight and passengers should be transported over it. There was no attempt to compel carriers that could not so agree, or, for any reason, would not so agree, to submit to the establishment of through routes and joint rates, and the apportionment of the same by the Interstate Commerce Commission.

But the first section of the Hepburn bill amends the first section of the interstate commerce act of 1887 so as to make it read in this particular as follows:

That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States to another, etc.

The effect of this amendment is to make all its provisions applicable to all railroads without regard to whether they are under a common control, management, or arrangement or not, and to routes made up partly of rail and partly of water transportation only in a certain contingency, namely, when, as under the old statute, they are subject to a common control, management, or arrangement.

The first comment that this provision excites is that there is no uniformity in the operation of the statute upon common carriers engaged in interstate commerce, for it applies in the one case to all railroads without regard to whether there is a common control, management, or arrangement, while as to routes made up of railroad and water transportation the statute applies only when those conditions exist. This is emphasized by the fact that all through water routes for interstate transportation are excluded from the provisions of the statute, such as from Chicago to Cleveland by lake, or from Cincinnati to New Orleans by river, or from Maine to Florida, or New York to Charleston or Savannah, in the coastwise trade, and many other routes of similar character that might be mentioned. They



are exempted from the act, notwithstanding rebates and discriminations may be granted and practiced with respect to such shipments as well as with respect to shipments over the routes and by the carriers mentioned in the statutes, and just as harmful in their results as when granted by the railroads.

But the question of uniformity aimed at by the commerce clause of the Constitution in the regulation of interstate commerce, under the provisions of this act, thus indicated, sinks into unimportance, serious as it may be, by comparison with what follows. By one of the provisions of the first section it is made the legal duty of railroads that are not under "a common control, or a common management, or a common arrangement," to "establish through routes and just and reasonable rates applicable thereto."

Through routes are desirable, and as a rule they are now everywhere established and being operated by agreement of the railroads, but there are some instances where through routes have not been established and for the reason that the roads have been unable to agree among themselves as to the apportionment of rates or the other terms and conditions under which there should be a mutual use of their tracks.

To meet such cases the second paragraph of section 15 of the interstate-commerce act is to be amended by section 4 of the Hepburn Act, so as to read as follows:

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists.

The provision, by reason of the amendment of section 1, already pointed out, applies to all railroads without regard to whether they have any interest in common or not, and by the terms of this clause the provision applies when the "carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates." In other words, it is proposed by this provision of the Hepburn bill to compel independent railroads that have no relation to each other, except possibly a physical connection, to enter into an agreement for an exchange of business and to pass all their cars over the lines of each other upon such joint rates as the Commission may establish and upon such apportionment of the same as the Commission may determine and upon such other "terms and conditions as the Commission may prescribe." The effect of this provision is to compel railroads that are unable to agree to submit in all such cases to whatever arrangement the Commission may see fit to prescribe.

To illustrate, suppose a railroad originating in Ohio or some other State, building eastward and desiring a trunk line into New York should tap the Pennsylvania road at Pittsburg or some other place and demand an agreement as to through rates on terms the Pennsylvania could not and would not accept. It might well be that the Pennsylvania, an old and expensive road, especially on account of her terminals in the great cities of the East, and particularly in New York, where they have cost hundreds of millions of dollars, would demand, as only fair and



equitable, a greater proportion of the joint through rate than the connecting road would be willing or able to allow. Thereupon this road would make its complaint to the Commission and the Commission on hearing would say, "It is made the duty of connecting roads to make through routes and joint rates. It is so provided in the first section of the Hepburn Act. You have neglected or refused to come to an agreement. We therefore make one for you. Whether your business is such on your own lines as to enable you to accommodate the cars and trains of the connecting road or not, we compel you to accept the same and pass them over your lines, and we fix the joint rate and your share of it at so much and the other terms and conditions necessary to be observed for this mutual interchange of business in the operation of the two roads are as follows." They order accordingly, and that is the end of it if this provision be constitutional.

What is thus done in the one case may be done in two, or a dozen, or a score, or a hundred other cases as to that same road if it is unable to agree with connecting lines seeking to use its tracks for through business. Thus it will come to pass that connecting lines wanting to have through trunk lines will see that it is unnecessary to go to the trouble and expense of building them, because they can appropriate, to the extent necessary, the Pennsylvania, or the Baltimore and Ohio, or the New York Central, or, going westward, the Union Pacific, or Southern Pacific, or Northern Pacific, or any other trunk line.

What it is thus proposed to do can be done, and done legitimately, but it can not be done in the way provided in this bill. What this bill thus provides for is a taking of private property for public use, and although that property, if you take again the Pennsylvania road for illustration, is already subject to a public use, it may be put to an additional public use, namely, a use by the connecting carrier or carriers to the extent indicated, but private property taken for a public use, although it may be a railroad already devoted to public use, can not be taken without making just compensation. The ascertainment of what is just compensation in such a case is like the ascertainment of what is just compensation in any other case, a purely judicial function that can not be exercised by a board, but only by the courts. In determining what is just compensation in such a case not only must rates of fare and the apportionment of the same be considered, but the franchises and every other element of value that may be taken or affected must be taken into the account.

Congress has no power to dispossess the courts of their jurisdiction to fix this compensation, neither can Congress prescribe a rule by which the compensation shall be ascertained. All this is settled in the case of *Monongahela Navigation Co. v. The United States* (148 U. S., p. 312).

I read as follows from page 327:

By this legislation Congress seems to have assumed the right to determine what shall be a measure of compensation. But this is a judicial and not a legislative question. The legislature may determine what private property is needed for public purposes—that is a question of a political and legislative character; but when the taking has been ordered, then the question of compensation is judicial. It does not rest with the public—taking the property, through Congress or the legislature, its representative—to say what compensation shall be paid, or even what shall be the rule of compensation. The Constitution

has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry. In *Charles River Bridge v. Warren Bridge* (11 Pet., 420, 571) Mr. Justice McLean, in his opinion, referring to a provision for compensation, found in the charter of the Warren Bridge, uses this language: "They (the legislature) provide that the new company shall pay annually to the college, in behalf of the old one, one hundred pounds. By this provision it appears that the legislature has undertaken to do what a jury of the country only could constitutionally do—assess the amount of compensation to which the complainants are entitled." See also the following authorities: *Commonwealth v. Pittsburg and Connellsville Railroad* (58 Penn. St., 26, 50); *Penn. Railroad v. Baltimore and Ohio Railroad*, 60 Maryland, 263; *Isom v. Mississippi Central Railroad* (36 Mississippi, 300).

In the last of these cases, and on page 315, will be found these observations of the court: "The right of the legislature of the State, by law, to apply the property of the citizen to the public use, and then to constitute itself the judge in its own case, to determine what is the 'just compensation' it ought to pay therefor, or how much benefit it has conferred upon the citizen by thus taking his property without his consent, or to extinguish any part of such 'compensation' by prospective conjectural advantage, or in any manner interfere with the just powers and province of courts and juries in administering right and justice, can not for a moment be admitted or tolerated under our Constitution. If anything can be clear and undeniable, upon principles of natural justice or constitutional law, it seems that this must be so."

We are not, therefore, concluded by the declaration in the act that the franchise to collect tolls is not to be considered in estimating the sum to be paid for the property.

The case is precisely in point. The Monongahela Navigation Company was a company incorporated under the laws of Pennsylvania for a public service, and the Congress undertook in authorizing its condemnation for another public use to prescribe the rule that should be followed in ascertaining and fixing just compensation and undertook to eliminate from such compensation the franchise that belonged to the corporation. The Supreme Court held, as we have seen, that this could not be done. Every question passed on in the Monongahela case would arise the very moment the Commission would undertake to establish a through route and to fix the joint rates and other terms and conditions upon which the through route so established should be operated, and there is no room for doubt as to how the courts would decide.

#### THE BILL ELIMINATES JURIES IN CASES WHERE THE PARTIES ARE ENTITLED TO THEM.

Section 5 of the Hepburn bill purports to amend section 16 of the Interstate Commerce Act as amended March 2, 1889. It would be more correct to have provided that what is set out in section 5 should be a substitute for section 16, because of the great dissimilarity not only in language but also in legal effect between section 16, as it now stands, of the interstate commerce act and the section as it will read if amended as proposed. Section 16 of the interstate commerce act as amended March 2, 1889, authorizes the Commission, or any party interested in any order the Commission has made under the provisions of that act, to apply by petition to the circuit court of the United States, sitting in equity, to enforce such order on complaint that the same is being violated, and the court may, in ordering compliance, make also an order for the payment by the carrier of such sum of money not exceeding \$500 per day for each day that the carrier shall fail to obey its order of injunction or other process. This is in the nature of a fine for contempt, and therefore clearly within the power of the court to impose.

Controversies requiring a trial by jury are especially exempted from the operation of this provision of the existing statute.

As to controversies requiring a trial by jury a special provision is made whereby that constitutional right is carefully protected and preserved to each and every party to such proceeding.

Section 5 of the Hepburn bill amends this section so as to eliminate trial by jury altogether. The provision of this amendment is that if "the Commission shall determine that any party complainant is entitled to an award of damages, \* \* \* the Commission shall make an order directing the carrier to pay the complainant the sum to which he is entitled on or before a day named." That is simple, straightforward, and easily understood, but without precedent in legal proceedings.

The amendment further provides, referring to these awards, that "If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant \* \* \* may file in the circuit court of the United States for the district in which he resides \* \* \* a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court, nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit \* \* \* In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such an order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; \* \* \* In case of such joint suit recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff."

It can not be claimed for the framers of this provision that they overlooked the fact that under the seventh amendment to the Constitution, in any action brought to recover money, if the amount involved be more than \$20, the parties are entitled to a trial by jury, for the provision of law now in force, which they were amending, was framed with careful reference to that fact and so as to preserve that right. It would seem, therefore, that they have intentionally framed this section in plain disregard of that constitutional provision, for surely the character of action provided for is one in which a jury trial must be allowed if the amount involved be large enough to meet the constitutional requirement in that respect, and either party to the action may so demand a jury. This provision would therefore be unconstitutional if these contemplated actions for which provision is thus made involved only one complainant and one defendant, but the section expressly provides that "in such

suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants," etc.

This provision is of such character that it is not unreasonable to suppose that whenever such an order is made there are likely to be a number in most cases, perhaps, a great number of shippers in whose favor an award is made, and this award may be made under this order not against one carrier alone, but against a number of carriers. The statute by this provision clearly contemplates that there may be numerous parties in whose favor such an award may be made, and that each order making such awards may run against a number of carriers.

In the nature of things the awards thus allowed by the Commission would not be the same to each shipper or the same against each carrier. All men do not necessarily ship the same commodities or the same amounts of a particular commodity. One man ships one kind of freight and another something else. The damages for which the award provided by this section is to be made will vary in amount. Perhaps no two shippers out of twenty, fifty or one hundred will receive an award exactly equal in amount to that of any other shipper provided for in the award. Under the same order, as the statute contemplates, one man's award may be against one particular carrier, and another man's award against another particular carrier, and so on indefinitely. Each man's award will, however, be his own individual claim, in his separate and individual right, as against the carrier or carriers named in the order. In other words, each individual shipper who is named in such an award will have a separate and independent right of action against the carrier or carriers damaging him, as named in the order.

Assuming now that an award order has been made, and that the carriers refuse to pay, and a suit is brought. There may be in the case 10, 20, 50, or even 100, or perhaps more complainants in whose favor these varying but separate and independent awards are made by the order, and there may be two, a half dozen, or even a dozen carriers named as defendants. Manifestly a jury trial would be impracticable and impossible in such a case. Perhaps that is the reason why the framers of this bill eliminated that Constitutional requirement by making no provision for its observance, but that does not change the fact that the bill in this particular is a grotesque absurdity, to enact which would discredit the intelligence of the Congress.

#### PENALTIES.

There are many other provisions of this bill that might be justly and severely criticised, but I have called attention to enough to warrant the conclusion that if it should be passed there will be many orders made affecting the rights of carriers, especially under section 15, as this act proposes to amend it, of the interstate commerce act, which seeks to empower the Interstate Commerce Commission to change rates and establish through routes, which the carriers will desire to litigate.

What the Commission regarded as a slight and reasonable change of rates in the Maximum Rate Case amounted to a difference in revenue to the railroads of \$3,000,000 per annum.



The change in rates made by the Commission in the Dressed Meats and Packing House Products case amounted during a few months, for which a computation was made, to a difference in revenue to the railroads of almost \$2,000,000, and so it is likely to be in every change of rates that the Commission may make that there will be, aside from all other considerations, a large amount of money involved, to the surrender of which the carriers may feel they have no right to submit without an appeal to the courts, but in no such case can they appeal to the court under the provisions of the bill as it passed the House without subjecting themselves to the following provision as to penalties:

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this act, shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

If an order be made that a carrier shall charge only a certain rate for the transportation of a certain article between given points, every charge of a different rate for such transportation will be a separate offense. There may be, therefore, many offenses for each day that the order is not observed. There will surely be as many as there are shipments charged for at a rate other than that fixed by the Commission. And there will be as many more as there are officers, agents, etc., of the carrier participating in the offense. Upon this theory the result to the railroad would be as many penalties of \$5,000 each as there were shipments at rates other than those prescribed by the Commission, increased by the number of officers, agents, etc., participating in the offense. There might be ten or twenty or a hundred of these offenses, or even thousands, in a single day. On top of all this, in case of a continuing violation, there is to be for each day an additional \$5,000. It has been claimed that the entire penalty in case of a continuing violation is to be only \$5,000 a day. The language employed does not admit of this construction. But assuming that this construction is correct, then the penalty prescribed would be \$5,000 per day, or at the rate of \$150,000 per month.

It is fair to presume that any such litigation as a carrier would be required to resort to for protection against an order it might deem unreasonable and unjust would extend over a period of months if not years. During all such period this penalty would be piling up against it, to be paid by it in the event of a final decision upholding the order of the Commission, for while the court might have power to suspend the payments of these penalties thus imposed from day to day during the litigation, it would not have power to grant relief from the cumulative obligation in the event it should be decided that the railroad had without just cause contested the validity of the Commission's order, for in that event the restraining order would have been wrongfully issued. When it is considered that this penalty is to run against the carrier and against every officer, agent, or employee of the carrier who knowingly fails or neglects to obey any such order it is apparent that the penalties thus prescribed are of such extreme, cumulative, and burdensome character as to deter a carrier from resorting to the



courts, except only where either the case is entirely clear as to its final outcome or the consequences of an obedience of the order are of such bankrupting character as to make it impossible, with due regard for the rights of its creditors and stockholders, for it to submit.

In the case of *Cotting v. Kansas City Stock Yards Co.*, 183 U. S., 79, the court, although finding it unnecessary to decide the point, took occasion to discuss the effect of cumulative and burdensome penalties upon the rights of parties to appeal to the courts. At page 100, Mr. Justice Brewer said, after speaking of the character of penalties under consideration in that case:

In this feature of the case we are brought face to face with a question which legislation of other States is presenting. Do the laws secure to an individual an equal protection when he is allowed to come into court and make his claim or defense subject to the condition that upon a failure to make good that claim or defense the penalty for such failure either appropriates all his property or subjects him to extravagant and unreasonable loss? Let us make some illustrations to suggest the scope of this thought.

Suppose a law were passed that if any laboring man should bring or defend an action and fail in his claim or defense, either in whole or in part, he should in the one instance forfeit to the defendant half of the amount of his claim, and in the other be punished by a fine equal to half of the recovery against him, and that such a law, by its terms, applied only to laboring men, would there be the slightest hesitation in holding that the laborer was denied the equal protection of the laws? The mere fact that the courts are open to hear his claim of defense is not sufficient if upon him and upon him alone there is visited a substantial penalty for a failure to make good his entire claim or defense. Take another illustration: Suppose a statute that every corporation failing to establish its entire claim, or make good its entire defense, should, as a penalty therefor, forfeit its corporate franchise, and that no penalty of any kind, except the matter of costs was attached to like failures of other litigants, could it be said that the corporations received the equal protection of the laws? Take still another illustration: Suppose a law which, while opening the doors of the courts to all litigants, provided that a failure of any plaintiff or defendant to make good his entire claim or entire defense should subject him to a forfeiture of all his property or to some other great penalty; then, even if, as all litigants were treated alike, it could be said that there was equal protection of the laws, would not such burden upon all be adjudged a denial of due process of law?

Of course, these are extreme illustrations, and they serve only to illustrate the proposition that a statute (although in terms opening the doors of the courts to a particular litigant) which places upon him as a penalty for a failure to make good his claim or defense a burden so great as to practically intimidate him from asserting that which he believes to be his rights is, when no such penalty is inflicted upon others, tantamount to a denial of equal protection of the laws. It may be said that these illustrations are not pertinent because they are of civil actions, whereas this statute makes certain conduct by the Stock Yards Company a criminal offense, and simply imposes punishment for such offense; that it is within the competency of the legislature to prescribe the penalties for all offenses, either those existing at common law or those created by statute; and, further, that although the penalties herein imposed may be large, yet obedience to a statute like this can only be secured by large penalties; for otherwise the company, being wealthy and powerful, might defiantly disregard its mandates, trusting to the manifold chances of litigation to prevent any serious loss from disobedience. A penalty of a dollar on a large corporation, whose assets amount to millions, would not be very deterrent from disobedience. It is doubtless true that the State may impose penalties such as will tend to compel obedience to its mandates by all, individuals or corporations, and if extreme and cumulative penalties are imposed only after there has been a final determination of the validity of the statute, the question would be very different from that here presented. But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws.

This language, so employed by Mr. Justice Brewer, might well have been uttered with special reference to this penalty provision of the Hepburn bill. The penalty is large; it is cumulative; it is burdensome. No railroad can afford to run the risk of it, except only in desperate cases that compel a choice between evils, and manifestly the provision was made, to quote the language of Mr. Justice Brewer, "in an effort to prevent any inquiry of the validity of this particular statute." Such a provision is wholly different from one imposing a burdensome and cumulative penalty for the continuing violation of a statute after its validity has been upheld in the courts. If this provision is to remain in the bill in the form in which it is expressed, it should be amended by the addition of a proviso that in the event of an appeal to the courts there should be an absolute suspension of the penalties during the full period that any order of such suspension may be in force while the litigation is in progress; otherwise the courts will no doubt hold it invalid.

THE BILL DOES NOT PROVIDE FOR ANY PROPER REVIEW BY THE COURTS.

Many other objections and imperfections might be pointed out, but enough have been mentioned to show why the framers of this bill should seek by the terms of it to prohibit a full review by the courts of the orders and proceedings of the Commission, except only as to whether they have been "regularly made," which means nothing more than a review of the question in any given case, whether an order of the Commission condemning a rate and fixing another to take its place has been made in conformity with the proceedings and requirements of the statute, not whether the rate condemned was or the rate substituted is reasonable or just or fairly remunerative as the bill allows and requires.

The points mentioned are sufficient, however, to show that if by any possibility this bill should be both passed and upheld by the courts, the powers conferred by it upon the Commission are so vast that there is a special reason in that fact alone for subjecting the exercise of them to the most careful scrutiny and review by the judicial department of the Government, not only on behalf of the railroads, but also on behalf of the shippers.

Fortunately some of the most important of the questions to which attention has been called can not be withheld from the courts. But the power to review the question as to whether a rate condemned or a rate made by the Commission in a given case is reasonable is, unfortunately, not one of these. The making of a rate is a legislative act, and legislative discretion of the Commission in determining what is a reasonable rate can not be interfered with by the courts in the absence of special statutory authority, unless the rate be fixed so high that it is extortionate to the shipper, or so low that it is confiscatory as to the carrier. There is some room for a difference of opinion, because of some of the expressions of the courts in some of the cases as to what will be regarded as extortion on the one hand, or confiscation on the other, but none as to the general rule.

But between extortion on the one hand, and confiscation on the other, there is, in most cases, a considerable latitude within which the action of the Commission, without special statutory provision for review of it by the courts, would be final and conclusive.

In a given case a dollar might be a point at which a rate would become extortionate, and 60 cents a point at which it would become confiscatory. A rate anywhere between these figures would be, in a legal sense, reasonable, and beyond the power of the courts, without special statutory provision, to review it, because it expressed the legislative will. If the rate were fixed at 90 cents it might yield a net revenue to the carrier of 6 per cent; if fixed at 80 cents a net revenue of 4 per cent; if fixed at 70 cents a net revenue of 2 per cent; if fixed at 60 cents no revenue at all.

Even 6 per cent might be, under certain circumstances, an unreasonably low return for the carrier. Much more might this be true as to 4 per cent or 2 per cent, and yet as the bill is framed the courts are denied jurisdiction to review all such questions, and in this denial there is strong probability, if not absolute certainty, that great and irreparable wrong may be done.

But this denial extends also to the action of the Commission in condemning the original rate, which is a purely judicial function, and without which precedent judicial action the legislative action of fixing a new rate can not be had. Whatever may be said as to the propriety of investing the court with jurisdiction to review the legislative act of fixing a new rate, it is difficult to perceive how there can be any difference of opinion as to the propriety of the courts having power to review the judicial act of denouncing and setting aside the old rate. But the bill denies this power by the restriction of the review to the question of "regularity," for the Federal courts, unlike the courts of the States, are not courts of general jurisdiction, but courts that have only the power and jurisdiction conferred by the Constitution, and such additional power and jurisdiction as may be expressly conferred by statute.

This same denial extends to orders as to rules and regulations of every character that the Commission may prescribe, and the same kind of objection to such restriction may be made.

Why should this jurisdiction be withheld from the courts? Who distrusts them? Only violators of the law have ever had occasion to fear the justice they administer.

They have been from the beginning of the common law the sure bulwark of the liberties and rights of the Anglo-Saxon race.

Unmoved by passion, prejudice, or public clamor, they have ever been the conservative, steady, reassuring factor in American Government.

Why should the advocates of this measure, affecting as it does the highest interests of the American people, seek to exclude them from their appropriate participation in the determination of the great questions that such legislation is sure to precipitate? That there is this unwillingness to allow the courts an unrestricted review is enough not only to excite distrust of this measure, but to condemn it.

All this is intensified by the fact that in the law as it now stands there is a complete provision for this review, as well as for the protection of the right of trial by jury.

Section 16 of the interstate commerce act, as it now stands, provides that whenever any common carrier shall fail to obey

any "lawful" order of the Commission, "not founded upon a controversy requiring a trial by jury," it shall be lawful for the Commission, or any person interested, to apply to the court to enforce such order, and the court shall have power to hear and determine the matter "speedily as a court of equity" \* \* \* "in such manner as to do justice in the premises; and to this end such court shall have power \* \* \* to make all such inquiries as the court may think needful to enable it to form a *just* judgment, \* \* \* and if it be made to appear to such court \* \* \* that the lawful order \* \* \* drawn in question has been violated or disobeyed, it shall be lawful for the court to enforce it," etc.

Aside from all legal questions involved, there is just ground for questioning the wisdom of conferring upon a statutory board appointed by the President, such autocratic powers as this bill confers upon the Commission with respect to such tremendously important interests. But it becomes alarming when it is seriously proposed in the form of a bill that has already, with practical unanimity, passed one House of Congress, to exclude from review and supervision and control by the courts the exercise of that power, except only to the extent of inquiring and determining whether or not the proceedings under the statute have been regular. Thoughtful men may well take fright when they recall that these powers are to be given to a commission to be thus exercised without supervision or control, which, according to the decisions of the Supreme Court of the United States, has erroneously decided almost every important case upon which it has passed judgment during the whole period of the nineteen years of its existence.

To the long list of such reversals another was added on last Monday, when the Supreme Court reversed the Interstate Commerce Commission in the Fruit Growers' case. That case strikingly illustrates both the unwisdom and the injustice of conferring upon the Interstate Commerce Commission powers that are not to be supervised by the courts.

The question in the case was whether the shipper or the initial road should determine the routing of fruit shipped from California to eastern cities.

The testimony showed conclusively—in fact, there was no contention to the contrary—that the shipper insisted upon routing his fruit shipments so that he might secure rebates from the eastern connections of the initial California road.

These rebates were of large amounts, aggregating, for the next four years preceding 1900, to one of the complainants alone \$175,000.

The roads took the routing into their own hands to break up this practice of rebating, and the Interstate Commerce Commission held against the right of the roads to do this. The effect of their decision, if allowed to stand, was to restore the wholesale practice that had previously been indulged in of granting rebates, or the encouragement of the most serious complaint that has ever been made against the railroads. If the Supreme Court had not had power to review and reverse, that decision would have stood, to the great detriment of all the interests involved and to the constant encouragement of a violation of the interstate-commerce act.



But, passing all that by, there is no necessity for any such legislation.

Under the Elkins Law, if enforced, all kinds of rebates and discriminations as to both persons and places can be broken up and prohibited as nearly as any kind of offense against the law can be suppressed; but, if it were otherwise, this law would not help matters, but only make them worse.

It does not profess to deal with rebates or to prevent carriers engaging in other kinds of business, and has not one line in it that affords any remedy whatever against these, the greatest and most serious and most complained-of evils of all that have been mentioned.

It does not undertake to meet the demand, whether well or ill founded, for uniform classification; neither does it undertake to deal with the "relation of rates" or discrimination as to localities.

The House Committee on Interstate and Foreign Commerce in its report on this bill said with respect to it:

This bill does not attempt to give power to the Commission to readjust classifications of freight.

\* \* \* \* \*

As but little complaint has been made to the committee concerning classification, it was not deemed wise at this time to suggest new legislation upon that subject. So, too, with the question of the relation of rates. The committee has not deemed it wise at this time to suggest new legislation to change existing law upon that subject. It is one of very great importance—interesting, however, as a rule—to certain particular communities rather than to the public at large. It involves conflicts between towns and cities rather than the public generally, and it relates more to the building up of certain local interests of a local nature rather than to the interests of the people of the whole country. Therefore we thought best not to hamper or hinder the subjects of the bill by adding to them those other less urgent considerations.

In this heartless way are dismissed the appeals for relief that have been coming up to the American Congress for the last twelve months from hundreds of places which, like Cincinnati, have been claiming that they are unjustly discriminated against.

No wonder the committee felt constrained in concluding its report to say that—

No member of the Committee on Interstate and Foreign Commerce believes that the provisions of this bill will be satisfactory to all persons who may be affected by it, nor that it will be satisfactory even to those who desire legislation upon the lines of the bill.

And yet this bill, thus confessedly unsatisfactory to every member of the House committee and probably to every member of the House of Representatives, passed the House without amendment, because, as the newspapers announced, "the order had gone forth" that, while there might be debate, no amendment—no matter how necessary it might appear—should be allowed. The bill came to the Senate, and, so far as the committee is concerned, there has been a repetition of that experience. No matter what may be its defects and no matter what this, that, or the other Senator may think, not an "i" shall be doctored nor a "t" shall be crossed of all this important measure. Nor even suggest that the bill is filled with unconstitutional provisions or that it will prove impracticable in operation is heralded as a species of treason and disloyalty—to whom or to what nobody knows. The whole proceeding is without a precedent in my experience as a member of this body and prob-



ably without a precedent in the history of the nation. If we are to abdicate our functions and permit such an imperfect, ill-advised, and ill-considered bill to become a law, discredit will attach and disappointment will follow, not only to "those who desire such legislation," as the House committee suggested, but to all the people of the whole country.

It will prove thus disappointing because if it does not fail and perish in the courts, experience will shortly demonstrate the utter impracticability of satisfactory rate making by a commission.

Approximate successes in small areas, if there are any such precedents, do not afford a safe guide for the vast field presented by the whole country, embracing every section and presenting every possible complication and difficulty that can be involved in railroad operation.

These roads with their innumerable ramifications spread over the whole country, penetrating every section, crossing and re-crossing each other at all important points, and wherever they cross or come in contact, and in some cases where they are thousands of miles apart or even run in opposite directions, they are in sharp competition with each other.

As a result of it all rates are adjusted with such nicety that the gross revenues of the roads are so closely calculated to meet interest, dividend, and operating expenses that a reduction of 1 mill on the cost of transporting a ton of freight per mile would so reduce the aggregate as to make it impossible for the roads to pay one dollar of dividends on their stock; and a further reduction of  $1\frac{1}{2}$  mills per ton per mile would make it impossible to pay one dollar of interest on their bonded obligations.

We should hesitate to disturb such conditions.

The answer made to this suggestion is that the Commission will have so little rate-making power that no harm can result from its exercise. If there be but little, then there must be but little necessity. But the difficulty seems to lie in the fact, not fully and properly appreciated, that rates are so interwoven and interdependent that it is impossible to disturb one without affecting many, and that since there will be no mode of relief afforded under this bill except through maximum rate making, if we give such an invitation for them as this bill amounts to, there are likely to be the most serious disturbances resulting from the exercise of this power. It matters not that the Commission, as it has been contended, will consider only one rate at a time. If it should make a change in that rate all other rates in any manner dependent upon it would have to be correspondingly changed.

A change of rates on the products of the cotton mills of New England to Chicago and western points would necessitate a corresponding change of rates on the products of the cotton mills of the South to the same points, for they are all adjusted with reference to each other.

A change in the rates on coal and iron from Pennsylvania and West Virginia to northern and western points would necessitate corresponding changes on coal and iron from all points in the South to the same markets.

A change of rates on lumber from Michigan and the Northwest to the prairies of Nebraska and other States would necessitate a corresponding change not only in the rates from the

lumber States of the South, but also on lumber from the far distant Pacific coast States.

A change in the rates on cotton from Memphis over the short haul across the country to the cotton mills of Georgia and the Carolinas would necessitate a corresponding change in the rates on cotton over the long haul from Memphis north and east, through Cincinnati, to the cotton mills of New England. Otherwise the roads that carry for the cotton mills of New England would lose their cotton business to the roads that carry to the cotton mills of the South, or lose it to the Mississippi River and the roads that compete with that highway to New Orleans and the other ports of the South.

Ocean transportation in the coastwise trade compels low rates over the Atlantic Coast Line to the principal points of the South. This compels the Seaboard Air Line, which parallels, to give like low rates or lose its business to the Coast Line; and the Southern Railway must meet this competition or lose its business to its competitors, and so on indefinitely. In other words, the rates over all these roads from these great cities of the North to all these great cities of the South are dependent one upon the other, and all are governed by water transportation and the conditions of nature, which constitute a power greater than the railroads, greater than the Congress, greater than any earthly power.

To touch the rates on any one of these lines is to touch the rates on all of them.

To touch the rate on any one commodity on any one of these lines is to touch the rates for that commodity over all these lines.

To touch the export rates over the lines from the Missouri and Mississippi valleys to New York and other North Atlantic ports is to touch the rates from the same points of origination over the lines to New Orleans and Galveston and other Southern ports, for they all have carefully adjusted relations to each other.

"The opening of new mines, the building of new factories, the starting of new furnaces and mills and shops, the building of new roads, the location and development of new settlements and towns and cities, the constant fluctuations of the markets at home and abroad, peace and war, droughts and floods, long and short crops, famine, pestilence, and the plague, all, whether occurring in Europe, Asia, Africa, South or North America, affect supplies, influence markets, and control the prices of transportation."

Illustrations and suggestions might be multiplied indefinitely, but enough has been said to show that it is idle to talk about the "restricted" exercise of the power of rate making, which it is proposed to confer on the Commission. No such thing is possible. It is as broad as the dependence of rates on each other and as difficult as the laws and forces of trade and commerce, and broader by far and more difficult than it is possible for any commission to deal with.

This work is done to-day by thousands of expert rate makers scattered throughout the country, familiar by long experience with the business, familiar with local conditions, and familiar with the requirements of changes in conditions as from time to time they suddenly come to pass. They may not be doing their

work perfectly. Nobody claims they are. No human effort can be perfect, but they are doing this work better than it is possible for any commission to do it that we may create. All these considerations impel me irresistibly to the conclusion, irrevocable in the absence of new light, that it will be a serious mistake to enact this measure.

Many other objections might be urged, but time and strength forbid pursuing the subject further for the present, so I hasten to conclude.

What, then, are we to do? The answer is plain. We can accomplish everything desired by simply amending the Elkins law so as to broaden and strengthen it and make it more available.

This is easily done. An amendment making such provisions will be offered at the proper time. I shall try to find opportunity to speak upon it then at such length as may be necessary to fully explain it. For the present it is enough to say that the purpose of this amendment will be not only to preserve the benefits of this salutary law, but to make them available, for every kind of case that can possibly arise, to the humblest shipper in all the land. This may be done by extending the provisions of the third section of the Elkins law to excessive rates, and by making it specifically applicable to every kind of rebates and discriminations as to both persons and places, and by making it the duty of the Interstate Commerce Commission not to act as judges, and legislators, and prosecutors, and sheriffs, but to address themselves to the purely executive duties of hearing complaints, exercising their powers of conciliation, and, where these powers fail and they find there is probable cause, sending the case at once, through the Attorney-General, to the proper court for immediate proceeding, in the name of the Government, for the benefit of all parties interested, without expense to the shipper.

The great difficulty shippers have had in the enforcement of their rights against the railroads has been that no shipper single handed and alone can, as a rule, afford to resort to the law with a railroad for his antagonist. The disadvantage is too great on many accounts, and particularly because the shipper is likely to be subjected to an expense he should not be required to bear; but if he can invoke the protection of the courts in the name of the Government, and without expense to himself, he will not fear to assert his rights, and if the railroad knows that it is charging him an unjust rate, or subjecting him to an unlawful discrimination, and that if it does not desist from such practice it will be called to account in the courts, where it will have the Government for prosecutor, it will in most if not in all cases make haste to agree with him.

I regret that it has seemed necessary for me to so long detain the Senate. There is much more I would say if it were not that I fear I would overtax your patience. I reserve all that for some future opportunity, and content myself for this occasion with the addition of a word somewhat personal.

It is not either easy or agreeable to differ with the President. He is the head for the time being, not only of the nation, but also of the political party of which I am proud to be a member. I believe that the welfare of the nation is most beneficially affected and promoted by the supremacy of Republican policies, and on this account think every man who believes in the policies

of that party should do all in his power to secure harmony of purpose and unity of action among its members with respect to national affairs. In this behalf he should be willing to make concessions in minor matters; but when questions arise of such commanding importance as those now under consideration it is the duty of every man who has an official responsibility to discharge with respect to them to make careful investigation and then act in accordance with the convictions he may reach as a result. To the best of my ability I have done that.

I dislike exceedingly, as every other public man does, to be arraigned before the country by unfriendly critics as prompted by unworthy motives in the attitude assumed, and to suffer in consequence in the esteem of the people. It is far pleasanter to go with the tide of public sentiment and enjoy the benefits of harmonious relations with coworkers in the public service and have the acclaim instead of the disapprobation of constituents; but no man who allows himself to be controlled against his judgment, by considerations of this character, can do his duty, or maintain his self-respect, or be entitled to retain the respect and confidence of his colleagues and constituents. If we enact this measure and it proves disappointing, as I believe it will, the people will not hear us to say in our defense that we legislated in response to their demands. They expect their representatives, especially in this body, with respect to questions of this character, to act intelligently, patriotically, and in accordance with their judgment and their oath of office which binds them to disregard public clamor and legislate for the public welfare as they see and understand it. We owe it to ourselves, as well as our constituents, to meet this just expectation.

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LETTER

OF

SENATOR FORAKER,

Of March 30, 1906.

TO THE

General Assembly of Ohio,

IN ANSWER TO

House Joint Resolution No. 8,

RELATIVE TO RAILROAD RATES.



LETTER  
OF  
SENATOR FORAKER,  
TO THE  
General Assembly of Ohio.

WASHINGTON, D. C., March 30, 1906.

*The General Assembly of Ohio.*

GENTLEMEN :

I have received by due course of mail your House Joint Resolution No. 8, passed February 23, 1906, of which the following is a copy :

(House Joint Resolution No. 8.)

JOINT RESOLUTION.

Relative to Railroad Rates.

Be it resolved by the General Assembly of Ohio :

SECTION 1. That the members of the General Assembly of Ohio believe that President Roosevelt was right when he recommended to Congress that a law be passed "conferring upon some competent administrative body the power to decide upon the case being brought before it, whether a given rate prescribed by a railroad is reasonable and just, and if it is found unreasonable and unjust, then after full investigation of the complaint to prescribe the limit of rate beyond which it shall not be lawful to go, the maximum reasonable rate, as it is commonly called, this decision to go into effect within a reasonable time, and to obtain from thence onward, subject to review by the courts."

SECTION 2. That we commend the wisdom of such legislation by the Congress of the United States, and request the Senators and Members of the House of Representatives from Ohio, in Congress, to vote for the passage of a law containing such provisions.

SECTION. 3. That copies of this resolution be sent to the Senators and Representatives of Ohio, in Congress, by the Secretary of State.

C. A. THOMPSON,

*Speaker of the House of Representatives.*

JAMES M. WILLIAMS,

*President pro tem of the Senate.*

Adopted February 23, 1906.

I have delayed answering until now, because I observed that you had under consideration a bill creating a Railroad Commission and empowering it to fix railway rates and prescribe railway regulations for Ohio.

It occurred to me that in the consideration of that measure you would find it necessary to consider and act upon some of the questions that have been discussed in the two Houses of Congress and that it might be easier, after such action, to make answer to your request.

I now learn that the bill, with some amendments, has passed both Houses and that it will, no doubt, receive the approval of the Governor and become a law.

I have a copy of it as it passed the House, and find, upon examination, as I anticipated when I concluded to await your action, that it contains an amended provision, to which I shall call attention, that has been accepted by the Senate without change, as I am informed.

But before pointing this out, allow me to say again, as I have repeatedly said heretofore in public utterances and in public print, that there is no difference of opinion upon the point that there are abuses practiced by the railroads



that should be prohibited and remedied, nor is there any difference of opinion as to the necessity for some kind of additional legislation to accomplish this purpose. The sole difference is as to what that legislation shall be.

Generally speaking, two propositions have been advanced: one to confer the rate-making power, as recommended by the President, on the Interstate Commerce Commission; the other to broaden and strengthen the jurisdiction and power of the courts under existing laws.

Many bills have been introduced embodying the former idea; a less number the second.

The first class of bills were intended by their respective authors to carry out the President's recommendation and were supposed to be in full compliance with the requirements thereof; the second class aimed to accomplish the same purpose, but by different methods.

Out of all these many propositions finally came the so-called Hepburn Bill, which, according to the announcements in the newspapers, had the special approval of the President and his Attorney-General, and was to be supported as an Administration measure. It passed the House without amendment, although there was much dissatisfaction expressed therewith by the members of that body; was considered in the Senate Interstate Commerce Committee, and although there was much objection and discussion, all amendments were finally rejected and it was reported to the Senate, and is now under consideration as it came from the House. It is earnestly and vociferously insisted that it shall now be passed by the Senate and become a law "just as it passed the House."

Before commenting on this proposition, I call attention to the fact that the President in his Message of December 6, 1904, recommended that

“the Commission (Interstate Commerce) should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, *subject to judicial review*, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and *to obtain unless and until it is reversed by the court of review.*”

Secretary Taft in his speech as temporary chairman of the Ohio Republican State Convention of May 24, 1905, interpreted this recommendation of the President and the Esch-Townsend Bill, which had then passed the House of Representatives, as meaning that the orders of the Interstate Commerce Commission fixing rates and regulations, “*when made shall be effective until set aside by judicial hearing.*”

In his speech at Akron, October 21, 1905, Secretary Taft further said

“The President’s proposition is that the power of the Commission shall be to hear a complaint that a particular rate is unreasonable, to declare it to be unreasonable and to fix the rate which should be reasonable, and embody this finding in an order which should stand *until set aside by a court either upon preliminary or final hearing.*”

It is believed, upon what is thought to be good authority, that both those speeches of Secretary Taft were made with the knowledge and approval of the President as correctly setting forth his views.

In the Esch-Townsend Bill and in the Interstate Commerce bill, framed by the Interstate Commerce Commissioners and by them presented to the Interstate Commerce Committee of the Senate in November, 1905, and which was at the time supposed to be the most intelligent and authoritative presentation of the President’s views, in the

form of a bill, that could be framed, as well as in nineteen other bills that have since been introduced in the Senate and the House at this session of Congress, all, as their respective authors understood and believed, in substantial conformity in this respect with the President's recommendation, it was carefully provided in one form or another that the orders of the Commission fixing rates and prescribing regulations should be subject to review by the courts in proceedings instituted therefor by either the carrier, the shipper or any other party interested, as to whether or not they were lawfully made in accordance with the terms and conditions of the proposed statute that they should be just and reasonable.

In every one of sixteen States of the Union where Railroad Commissions or other officials have been authorized and empowered to fix rates and prescribe regulations, suitable provisions have been made for a review by the courts of all such orders.

Such was the previous discussion, and such the character of legislation on the subject in the different States, and such the character of all the bills that had been introduced, when the Hepburn Bill made its appearance.

Like all the other bills it conferred the rate-making power, as recommended by the President, on the Interstate Commerce Commission, but unlike every similar statute enacted in the various States, and unlike every other similar bill introduced in Congress, and in direct conflict with the utterances of the President and every other person who had spoken for him, it not only fails to provide for a review by the courts, but it is intentionally so drawn, as some of its leading advocates acknowledge, as to prohibit such a review, not only upon the petition of the carrier, but also upon the petition of the shipper or any other person or community interested or affected by the orders of the Commission.

This feature of the bill was so unexpected, so unprecedented, so un-American and so in conflict with that rule of American life and American institutions that "every man is entitled to his day in court," that every other question raised by the proposed legislation has been overshadowed and almost lost sight of in the debate that is now in progress.

Notwithstanding the acute character of this particular question, in some remarks I made to the Senate on the 28th of February, I took occasion to discuss the general subject at length, pointing out as well as I could a number of the provisions of the bill that are, in my judgment, unconstitutional, and giving reasons why, in my opinion, the bill, if it should be enacted and be upheld by the courts, will prove a sore disappointment to all who are interested in securing such legislation, because of its manifest deficiencies as a remedy for any trouble of a serious character of which complaint has been made.

In view of your request I have taken the liberty of sending a copy of these remarks to each member of your body in order that all may know in full, if they so desire, the views I entertain, and the reasons for them, with respect to this measure, and with that purpose in mind, I ask that those remarks may be considered by reference as a part of this communication.

It is unnecessary for present purposes to review those remarks further than to call attention to the fact that I have undertaken to show that if we enact the Hepburn Bill as it passed the House, we must encounter a number of the most serious constitutional and legal questions, on account of which the measure will probably perish in the courts, and that, if it should stand that test, the law will not prevent or in any manner remedy the practice of giving secret rebates, making discriminations among individual

shippers, the lack of uniformity in classification, or the evil to communities of unjust and discriminatory relative rates.

The House Committee in their report admit and concede all this and acknowledge that they do not attempt to deal with these evils.

In those remarks I undertake, not only to show these defects of the Hepburn Bill, but also to point out, upon facts and testimony of an indisputable character, that by a simple amendment of the present law, which I have already introduced in the Senate, the existing remedial provisions of the statute can be so broadened and strengthened as to reach and effectively prevent all these abuses.

This amendment involves but one hearing, and that in the courts, in a proceeding, in the name of the United States, without trouble to the shipper, under a requirement that the courts shall proceed summarily to hear the complaint, postponing all other business, in so far as may be necessary to enable it to do so, thus avoiding all delays. On this account this proceeding will be far more expeditious than the proceeding provided by the Hepburn Bill. It goes further and relieves the shipper of all expense of the litigation on account of which he has been heretofore so burdened and hampered, that in many cases he has preferred to suffer the wrongs to which he has been subjected rather than undertake, single-handed and alone, to fight a railroad before the Commission or in the courts.

In addition to these advantages, which would be of incalculable value to the aggrieved shipper, the proceeding would be under a statute that has already been upheld by the Supreme Court of the United States and under which more has been done to correct railroad evils than under any act of legislation that has yet been enacted by any of the States or the Federal Government.

No constitutional or legal questions can arise, for all have been discussed and passed upon by the court of last



resort. There would be, therefore, in such a proceeding nothing experimental.

I have been hoping that in some form or other this kind of legislation, which could not prove otherwise than effective, may be enacted; but assuming that the Hepburn Bill in some form will be passed and become a law, I shall consider it my duty to do all in my power to make it a constitutional, workable and effective measure. My oath of office requires that, and I would not only violate that but also my duty to my constituents and the whole country if I were to do otherwise than follow its requirements.

With respect to this duty you have relieved me of all embarrassment by the action you have taken in adopting the amended provision above referred to, as a part of the measure you have just passed, to provide for a full and complete review in the courts of the orders of the Commission you have created; for now, in view of your action, I feel confirmed in the opinion that it is my duty to insist upon such amendments to the Hepburn Bill, as a condition precedent to the support of it, as will secure to carriers, shippers, communities and all others who may be parties in interest affected by the orders of the Commission, a right to appeal to the courts for a judicial determination of any questions that may arise involving or affecting their interests, for if such a provision is important in a State statute, it requires no argument to show it is much more important in a statute that applies to the whole country. I so conclude because this is necessarily and properly the interpretation you have placed upon the recommendation of the President, which you have quoted in your resolution. Your action was, of course, taken intelligently, deliberately and officially, but aside from the fact that it was taken in this intelligent and deliberate way is doubtless the further fact that because of the equity and justice in-

volved you would not change your action even though the President might, for some reason sufficient for himself, see fit to change his own views with respect to such a provision as it has been claimed, erroneously, I hope, he has done.

But however all that may be, upon your action in adopting this amended provision I most heartily congratulate you and the people of Ohio, for by it you have, at an opportune time, fittingly rebuked the sentiment that would if possible excite distrust of the courts, destroy their usefulness and debar them from their appropriate participation in the settlement of the great and far reaching questions which legislation of this character must precipitate, and at the same time you have put Ohio in harmony with all her sister States and with the spirit of fair play that underlies and characterizes our constitution and all our institutions of government.

With felicitations upon the near approach of the conclusion of your labors and upon the very creditable record you have made, I remain, with sentiments of highest esteem,

Very truly your, etc.,

J. B. FORAKER.



AMENDMENT TO HEPBURN BILL.

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SPEECH

OF

HON. J. B. FORAKER,

OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

Thursday, April 12, 1906.



WASHINGTON.

1906.





SPEECH  
OF  
HON. J. B. FORAKER.

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The Senate having under consideration the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission—

Mr. FORAKER said:

Mr. PRESIDENT: The amendment I now offer is an amendment adding a section to the bill. It does not conflict with any provision in the bill.

It provides, Mr. President, that when a complaint is made before the Interstate Commerce Commission, the shipper, if he be the complainant, or a community, if it be the complainant, may elect to proceed under this provision instead of under the provision of the Hepburn bill, if we enact it into law.

This is a proceeding that will be had in the courts altogether. That there is a necessity for some such proceeding as this being provided for at the present time is made more and more plain to my mind by every Senator who addresses the Senate. The Senator from South Carolina [Mr. LATIMER], who concluded his remarks only a moment ago, said, in concluding, that the bill was not according to his liking; he would be glad to have it amended; and in some amended form, although he might not like it, he was going to vote for it. And so it was in the House of Representatives. When the committee reported this bill they took care to say that it was probably not satisfactory to any member of the committee that reported it favorably. It is common knowledge that the so-called "Hepburn bill," if it be enacted into law, will not meet entirely the views of more than a few Members of the House or members of the Senate; perhaps it will not entirely meet the views of anybody.

While there is that diversity of opinion as to what this legislation should be, there is no difference of opinion, Mr. President, on the point that if we enact the Hepburn bill or any measure like it, without amendment, we will necessarily encounter a great many constitutional and legal questions. I am not going to speak about them now, because I have done that on another occasion at length. But I will call the attention of the Senate to the fact that the Hepburn bill raises, in the first place, a question as to whether or not Congress has power to fix rates at all. Senators may say that this is not a serious question, but I think it is. I think the Supreme Court took pains to advise us that it is an open question upon which it does not regard itself as having expressed an opinion, and that in so recent a case as the Northern Securities case.

It will raise also—if that point be passed safely when this bill becomes a law and is put to the test in the courts, as no doubt it will be sooner or later—the question whether, under this bill as it is drawn, as it passed the House, as it was re-

ported from the Senate Committee on Interstate Commerce, as it stands down to this moment, does not delegate legislative power to the Interstate Commerce Commission. Of course I do not know how it may be amended in that particular; it is possible that it will be so amended as to obviate that question; but it seems to me it is impossible to obviate it, and it is a serious question which we should avoid, if we possibly can, by legislating upon this subject.

Then, in addition to those questions, the bill will raise the question, if it becomes a law and be put into operation, as to port differentials; whether the Commission can, if the rates over any road to any one of the Atlantic ports of entry be challenged, maintain as against that challenge the difference in rates which confessedly has been made only to overcome the natural advantages of the port of New York as compared with the port in whose favor the differential in question is made.

It will raise another very important and, I think, most serious question, as to whether we can constitutionally empower the Commission in the way it is proposed to empower it, to establish through routes and make joint rates as to railroads that can not and will not agree, but which are as separate and distinct as two individuals may be.

Then there is another serious question arising because of the penalties provided in this bill, and another because of the elimination, as I will term it, of jury trials in actions brought on awards of damages made by the Commission. I do not mean the elimination in express terms, for everybody will say that could not be done, but the elimination of jury trial by making a jury trial utterly impossible in the form of action provided for in this bill.

Then, in addition to that, I think a very serious question will be raised, if this bill be not properly amended so as to avoid it, as to the power of visitation which it undertakes to confer upon the Commission, to be exercised by it. As to these common-carrier companies, they being companies incorporated under State laws, I doubt the power of Congress, in regulating interstate commerce, to go further than the regulation of interstate commerce may require. I doubt the power of Congress, for instance, to require that a corporation organized under the laws of a State, engaged not only in interstate commerce, but also in intrastate commerce, shall keep no books, not even a memorandum of a transaction, except only such as the Interstate Commerce Commission may prescribe. I doubt the power of Congress to have anything whatever to do, except only to gather information for statistical purposes, with the business of a corporation that is confined wholly to a State.

Mr. President, there are other questions than these which will be raised. Some of them have already been very elaborately argued. Some questions have been raised also by amendments; but I am speaking only of those that the bill itself necessarily raises. I do not mention these questions for the purpose of now taking them up and debating them, for I have already heretofore done that. I only mention them to show that if what we have in view is not simply the passage of a rate-making bill, but a remedying of the evils that shippers are justly complaining of, we should avoid in legislating that which raises so many serious constitutional and legal questions, if we

can, and we should, if we can, resort to some other method that avoids all of them.

I introduced a bill at the beginning of the session which I thought did avoid all of them. I have become satisfied, however, that that bill, in the form in which I introduced it, can not possibly pass; that a rate-making bill such as this is, or something like it, will pass and having reached that conclusion, I have determined that instead of insisting upon my own bill as a substitute for the pending measure, I will offer this amendment to be added to this bill. It is an amendment that is not in conflict with any provision of the bill. It is an amendment that amounts simply to a broadening and a strengthening of existing law. It is an amendment that not only avoids all these legal complications, but that avoids every question as to the practicability of the law. It is an amendment that involves, if we adopt it, the enactment of law that has already received the sanction of the Supreme Court of the United States, and about which, therefore, there can not possibly be any criticism as to its constitutionality, neither can there be—because experience has demonstrated it—any question as to its workability and entire practicability.

The amendment is merely of the third section of the Elkins law now in force. The amendment has been printed. If any Senator is enough interested to allow a page to hand him a copy of it, he will see at a glance just what is new matter; that it is very simple; that it is very easily understood. It is offered, as I said a moment ago, not to take the place of anything in this measure, but only to preserve and perfect in so far as we can the law now existing, the law in force, the law as to the efficiency of which men have testified without exception who have had to do with the regulation of interstate commerce; a law which the Interstate Commerce Commission has said in its official report is an excellent law, an efficient law; a law which every member of the Interstate Commerce Commission who was asked about it when he appeared before the Interstate Commerce Committee of the Senate testified was an excellent and efficient law and that it had accomplished great good.

In some remarks I made in the Senate on the 28th of February last I set forth at length these testimonials not only from the Interstate Commerce Commission acting officially in the making of its reports, but also testimonials given by witnesses who appeared before the committee, including the members of that Commission and including such distinguished representatives of the sentiment in favor of railway rate legislation as proposed in the Hepburn bill as Governor Cummins, of Iowa; Mr. Cowan, of Texas, and other gentlemen whom I might mention.

I am warranted, Mr. President, in view of the testimony I have already put in the RECORD, in saying that there has never been since the first interstate-commerce act of 1887 any legislation enacted either by the Congress of the United States or by the legislature of any of the States that has done so much to afford to the shippers of this country a remedy that was efficient and satisfactory in its character as the Elkins law, which we enacted in February, 1903. That law as we originally enacted it and as it stands to-day was designed to reach all the evils now complained of except one class of evils. It was aimed

expressly by its terms at rebates, in whatever form they might be granted, and at discriminations by the carriers in their treatment of shippers in whatever form or whatever guise those discriminations might be allowed or practiced. When you have reached every form of rebate and every form of discrimination, you have reached every evil that has been complained of except only excessive rates. The Elkins act did not undertake to deal with excessive rates.

Mr. MORGAN. Will not the Senator from Ohio incorporate that act in his remarks and let it go into the RECORD?

Mr. FORAKER. Yes; certainly. The entire Elkins law?

Mr. MORGAN. Yes; the entire act.

Mr. FORAKER. At the request of the Senator from Alabama, I ask that the entire Elkins law be printed in the RECORD as an appendix to my remarks.

The VICE-PRESIDENT. Without objection, it is so ordered.

Mr. FORAKER. I ask also that the amendment which I offered may be printed in full preceding the Elkins law.

The VICE-PRESIDENT. Without objection, it is so ordered. [See Appendix.]

Mr. DOLLIVER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Iowa?

Mr. FORAKER. Certainly.

Mr. DOLLIVER. I have no criticism to make upon the Senator's eulogy on the Elkins law, and I have heard testimonials in favor of it that have been produced from many quarters; but I have not been able to find any actual evidence of the value of that law in dealing with any of the railway abuses with which we have been concerned. It seems to have been, so far as the Government and the courts are concerned, without a very extended application, so far as I can find out.

Mr. FORAKER. Permit me to call the Senator's attention to two or three cases, very celebrated among the cases that have been recently decided, where the litigation was conducted under the Elkins law.

I will first call his attention, however, to the case reported in 189 U. S., with which I know the Senator is entirely familiar, known as the Wichita case, where a suit was brought in equity by the Interstate Commerce Commission against the Missouri Pacific Railroad, at the request of Wichita, to enjoin a discrimination against Wichita, as the Commission alleged in its bill of complaint, the ground being that Wichita was situated on one of the lines of the Missouri Pacific, not on the same line, and less distant from the city of St. Louis than Omaha was, which was situated on another line of the Missouri Pacific, and yet the rate was more to Wichita than it was to Omaha.

That proceeding was commenced before the Elkins law was passed. There was some doubt about the jurisdiction of the court in the court below, because then the Elkins law had not been passed. But when the case reached the Supreme Court the Elkins law had been passed, and the Supreme Court held that the Elkins law took effect and was applicable to that case as well as to any other case that might thereafter be brought, and that the proceeding could be maintained under the Elkins law, and remanded it with that direction to the court.



Mr. DOLLIVER. Now, Mr. President, if anything else has ever happened in that case I have not been able to find a record of it.

Mr. FORAKER. The Senator is aware of what happened. When the case went back the parties adjusted their differences, because here was a plain, unqualified remedy that the Congress of the United States had provided. The Supreme Court having upheld the law, and the way of the litigant being made plain and easy, they got together and adjusted their differences just as effectively as though it had been by a judgment.

Now, let me tell the Senator of another case. The Senator is familiar with what is known as the "Chesapeake and Ohio and New Haven coal case." That was a suit brought under the Elkins law to enjoin a rebate which was being granted and paid by the Chesapeake and Ohio on coal, which the Chesapeake and Ohio itself had sold to the New Haven road in the way the Senator is familiar with. The rebate was granted by making a difference in the price. That proceeding was commenced under the Elkins law, was prosecuted through to the Supreme Court of the United States, and the Supreme Court of the United States held that the court had jurisdiction to enjoin that abuse; and not only to enjoin that abuse, but to enjoin the continuation of the Chesapeake and Ohio in the business of owning coal mines and trading in coal.

Mr. DOLLIVER. But I apprehend, Mr. President, that that suit could have been maintained under the original interstate-commerce law.

Mr. FORAKER. It was not undertaken under the original interstate-commerce law, and I do not think it could have been maintained under that law.

Mr. DOLLIVER. I notice that a similar suit was maintained against all the roads carrying packing-house products out of Kansas City some years before the interstate-commerce law was enacted.

Mr. FORAKER. That suit was commenced under the original law, but in the court below there was a most serious contention as to whether or not the court had jurisdiction, and whether it had power to grant the relief that was prayed for, and the Elkins law came to the relief of that prosecution just as it came to the relief of the other. Since the Elkins law there has been no question about the jurisdiction of the courts to enjoin proceedings of this kind. There is wherein is its great excellence.

Now, a few days ago we had another case called to our attention. A coal-mine operator in West Virginia made complaint that he could not get his fair allowance of cars; that he was discriminated against. He appealed to the Interstate Commerce Commission, and the Interstate Commerce Commission looked into it sufficiently to have an opinion that there was ground for a suit. Immediately, under the Elkins law, it applied for a writ of mandamus to compel the railroad company to grant to this coal-mine operator a fair share of the cars. They alleged, I believe, it was entitled to  $33\frac{1}{3}$  per cent of the cars that were for the use of the mine operators in that locality. That was heard in the circuit court without delay and a favorable judgment rendered. It was taken to the circuit court of appeals and there that judgment was affirmed, Chief Justice Fuller presiding at the circuit and delivering the opinion, the



prayer of the petitioner being granted, with this modification, that instead of allowing 33½ per cent of the cars they allowed 31 per cent, which they found to be the exact and proper proportion.

So I might go on if it were not, Mr. President, that the law is yet a comparatively new law and there has not yet apparently been much endeavor to put it into operation by those who are charged with the duty of enforcing it. But in every instance where the law has been applied it has proved, as I said, an efficient remedy and a prompt remedy.

But it yet has some defects. It applies, as I said, only to rebates such as were prohibited in the Chesapeake and Ohio and New Haven coal case, and to discriminations such as were alleged in the Wichita case, as I will call it for the want of a better name—the one I referred to a few moments ago. It did not undertake, as I stated, to deal with existing rates, and why not?

Mr. President, until long after this legislation was enacted nobody heard of any serious complaint about excessive rates. It was all about rebates. For years the shippers of this country have been complaining, and justly complaining, about rebates. Nobody ever made any serious complaint about rates being too high until this agitation commenced, and not then until in the very last months of it.

Rebates and discriminations have been the complaint, and justly so. When a shipper living in Chicago or living in Iowa or living in Cincinnati buys goods in New York, he not only wants a just and reasonable rate, but he wants, above all other things, to know that his competitor in business at home does not get any lower rate than he gets; and it is because he has not been able to know that, it is because this habit of making rebates has been practiced, growing out of the fierce competition to which the railroads were subjected, that the shippers have been making a special complaint about rebates.

Another class of complaint was about discriminations. A shipper did not want to be discriminated against by having a preferential rate allowed to his competitor or by having an allowance made to his competitor on account of a so-called "terminal road," or on account of an elevator charge or on any other account. The community did not want to have rates so adjusted relatively as that it would suffer in its competition with other cities in contending for a market that it wanted to supply.

So we had complaints about rebates and we had complaints about discriminations, but I never heard of a complaint about excessive rates, except now and then, perhaps, some exceptional instance was brought to our attention, until within the last two or three months.

So recently as last November the representatives of the railroad employees of the country called upon President Roosevelt and to him entered a protest against this proposed legislation on the ground that by a reduction of rates their wages might be put in jeopardy. The President said, in answer to them, that he did not think the result of the operation of the proposed law would affect wages, for he did not understand there was to be any reduction of rates, remarking in that connection that he had heard but very little complaint—perhaps he said, "very little, if any, complaint at all"—of that kind. I can not quote

his exact language, but that is the effect of it, as every Senator here will remember.

Down, I say, until that time there was no complaint about rates being too high. When a representative of my own home city of Cincinnati came here to testify before the Interstate Commerce Committee, a very intelligent and well-informed man on this subject—Mr. Hooker—he took occasion to say that in his long experience he had never known of excessive rates. Perhaps he used the words “extortionate rates.” He said the complaint was not that rates were in and of themselves too high, but only that they were relatively too high as compared community with community, their particular complaint being that rates over the road from Cincinnati to Chattanooga and Atlanta and other points in the South are relatively too high as compared with the rates from New York and other Atlantic seaboard cities to the same common points in the South.

Now, Mr. President, it was because down until February, 1903, nobody had made any complaint about rates being too high, that we did not undertake to deal with that subject in the so-called “Elkins law.” I know whereof I speak, because while I did not draw that law, while I do not know who did draw it, I did help to make amendments to it. I was on the subcommittee to which it was referred, and I remember that for weeks we were studying not only the provisions of that bill, but the whole general subject.

Mr. ELKINS. For months.

Mr. FORAKER. Yes; for months, as the Senator from West Virginia suggests. We were studying it most conscientiously. We were hearing all who came, whether the representatives of shipping interests or the representatives of railroad interests, getting all the light, getting all the information as to what we should do with respect to it; and in all that hearing, from the beginning to the end, not one single witness ever told us about excessive rates. Go search the record and ascertain. It was all about rebates; it was all about discriminations.

Finally we came down with such historical incidents as all are familiar with, but to which I need not now refer, in our experience with this legislation, to the present session of Congress. In the House of Representatives they undertook to deal with this subject; and meanwhile, everybody having been induced to give attention to the general subject, we suddenly had three classes of complaints instead of only two. One was added. To rebates and discrimination were added excessive rates, and we commenced to hear and to discuss about excessive rates.

Well, we had gone over all that in the hearings the Senate committee had given last spring, and with the result that witness after witness testified—shippers and railroad men alike—that so far as they had knowledge there was no serious complaint anywhere of excessive rates. The trouble was about rebates and about discriminations, and all alike testified that rebates and discriminations were being broken up and put an end to by the Elkins law in so far as it was being enforced.

So the House took up this subject with a view of dealing with all these complaints, and they considered rebates in all the various forms in which they have been allowed, not only rebates granted and paid in money, secretly or openly, but rebates

allowed by discriminations—by allowance for terminal roads, for elevator charges, for icing charges—rebates of every character and description that could be thought of. Every kind of a rebate that human ingenuity could devise was talked about, and discriminations of every character were testified about, and they considered them in the House; discriminations as to localities, discriminations by means of relative rates that were unjust. I should call attention to another complaint, that of rebates and discriminations by reason of a lack of uniformity in classification. They considered them all, and what was the result? They reported a bill, and in the report not only said, as I said a minute ago, that no member of the committee was entirely satisfied with the bill, but they went on to say that they had found it inconvenient to deal at this time with relative rates between communities, and so they had passed that subject over in silence; that they had found it inconvenient at this time to deal with the subject of uniform classification, and so they passed that over in silence.

As to rebates they did not say anything at all and did not put anything in their bill. They never mentioned them in any way, shape, manner, or form whatsoever, but so far as the classes of complaints we have been hearing so much about were concerned they confined themselves to excessive rates, and had nothing to offer to break up rebates, nothing to offer to change the wrong of unjust relative rates, nothing to break up and destroy discriminations of any kind whatever except only by excessive rates, and excessive rates, as I pointed out, was the least of all the evils that have been complained of.

Mr. DOLLIVER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Iowa?

Mr. FORAKER. Certainly.

Mr. DOLLIVER. Does the Senator from Ohio understand that the bill as passed by the House makes no reference to rates that are unjustly discriminatory?

Mr. FORAKER. No; it does make reference to rates that are unjustly discriminatory in the sense that they are by comparison excessive rates. The Member of the House, Mr. HEPBURN, who had the bill in charge, the Senator will remember, took occasion to speak upon that subject, and others did. There was no common agreement there, and perhaps none here.

Mr. DOLLIVER. If the Senator would examine section 15 of the bill, he would notice that it deals not only with rates which are excessive—that is to say, unjust and unreasonable—but also with rates that are unjustly discriminatory.

Mr. FORAKER. Well, unjustly discriminatory as to what?

Mr. DOLLIVER. In any respect forbidden by law. It undertakes to deal with discrimination involving the relative rates between places by giving the Commission absolute command of the rate at the high point. I will add, while I am on my feet, that probably their failure to go elaborately into the subject of rebates and discriminations was because they shared the fine confidence of the Senator from Ohio in the law of 1903.

Mr. FORAKER. They did, undoubtedly, Mr. President, and that is exactly what I am coming to. I am pointing out with great particularity that, while it is true, as the Senator says, that the word "discriminatory" is used, yet the bill is so framed, as has been asserted over and over again, as to apply

only to excessive rates; discriminatory as to what? There is not a word in the bill to show. Not discriminatory as to communities. They expressly say they did not undertake to deal with that subject. They said it in their official report, which I have a right, I suppose, to quote in this presence.

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Rhode Island?

Mr. FORAKER. Certainly.

Mr. ALDRICH. I should be glad to know the Senator's opinion as to the meaning of the words "unjustly discriminatory." Does that mean that when a rate, say, from New York to St. Louis, by the New York Central is less than the rate from New York to St. Louis by the Pennsylvania road, it would be a rate that was unjustly discriminatory?

Mr. FORAKER. Well, Mr. President—

Mr. ALDRICH. I should like to have somebody who has authority, if there is such a person, state the meaning.

Mr. FORAKER. I have no authority. I am giving to this bill the interpretation those who framed it and brought it before the House of Representatives gave to it, and I am saying with respect to it that while it uses that indefinite term it does not tell us discriminatory as to what, but it can have but one meaning.

Mr. ALDRICH. Perhaps the Senator from Ohio is willing to allow the Senator from Iowa [Mr. DOLLIVER] to make a statement on this point.

Mr. FORAKER. Yes; I am willing, but I want to say "unjustly discriminatory," as this bill has been interpreted from the beginning, is a complaint that is referred to in the bill for which the remedy provided is a lessening of the rate that may be challenged as unjustly discriminatory because too high as compared with some other rate. That is what has been contended all the while. So you come back, in the case of an alleged discriminatory rate, to the question whether or not the rate that is complained of is too high as compared with some other rate.

Mr. DOLLIVER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Iowa?

Mr. FORAKER. Certainly.

Mr. DOLLIVER. I have tried to point out once or twice here that the bill deals only with complaints directed against a railroad or a joint route constituting a line of railroad. Of course it does not undertake to deal with the discrimination that arises from the fact that one railroad between two points charges a different rate than another railroad between two points. In fact, such a case is not imaginable in the present state of the business world.

Mr. ALDRICH. It seems to me that it might be easily imaginable that one party might object to the New York Central Railroad, in the case to which I have alluded, charging much more than the Pennsylvania did for substantially the same service, say, from New York to St. Louis. If people who are suffering from unjust discriminations of that kind have no relief from this bill, as I understand the Senator now to contend, I am very glad to know it.



Mr. DOLLIVER. I have examined a good many railway schedules, and I have failed to find any two roads between two given points, one of them charging a low rate and the other a high one. The railway world would think that that would speedily operate to transfer the entire business to the road that was charging the low rate.

Therefore, I say, the Senator's suggestion is not a practical one. But if a railroad between New York and St. Louis is charging a rate to an intermediate point unreasonably high, which amounts, of course, to a discrimination to those points on the road that are entitled to as low or a lower rate, an absolute command over that discrimination is given to the Commission by this bill, and it is given all authority to reduce that rate, not because it is too high, but because it works an unjust discrimination against some other point on the line.

Mr. FORAKER. I knew the Senator would answer in that way. He could not answer in any other.

Mr. ALDRICH. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Rhode Island?

Mr. FORAKER. Certainly.

Mr. ALDRICH. Allow me to pursue that subject one further step. Suppose instead of the rates being from New York to St. Louis, in one case it is a rate from Boston to St. Louis, the distance being greater than from New York to St. Louis, and the rate from Boston to St. Louis is much less than the rate from New York to St. Louis. In considering what should be a reasonable rate from New York to St. Louis, would not the unjust discrimination be taken into consideration?

Mr. DOLLIVER. If it was the same line—

Mr. ALDRICH. No; not the same line at all.

Mr. DOLLIVER. Then this bill gives the law no application to a differential arising between points on separate lines of road.

Mr. ALDRICH. But that is not in the bill. That is only the Senator's contention as to something which is outside of the bill, an understanding of his about it. There is nothing of the kind in the bill.

Mr. DOLLIVER. I am not undertaking to discuss anything that is outside of the bill. I have undertaken to interpret the bill, and I think I have interpreted it correctly, if I can get anybody to read it. I seem to be at a disadvantage in that respect.

Mr. ALDRICH. There is nothing certainly in the bill, and I have read it with more or less care several times, which says that this unjust discrimination must be along the same line.

Mr. DOLLIVER. But the bill says that the complaint must be against a carrier or a line of carriers. The complaint is thoroughly described, and the Commission entertains no complaint except one made under section 13 of the present law.

Mr. ALDRICH. The complaint is that the rate is unreasonable, and the complainant cites instances where there is a rate between two points at a greater distance that is lower, and, therefore, that the rate on that account is not only unreasonable, but unjustly discriminatory.

Mr. DOLLIVER. That would be a question of evidence. If the Senator would examine carefully section 13 of the existing law he would see exactly the character of the complainant and exactly the character of the complaint. Those are the only



complainants and the only complaints that could be entertained by the Commission.

Mr. ALDRICH. What is the character of evidence the Commission would be obliged to take into consideration in determining a reasonable rate?

Mr. DOLLIVER. I would not undertake to go into that.

Mr. FORAKER. The Senator from Iowa has contended all the while that only one rate or the rates on one line of road could be challenged and dealt with at a time. I do not think many Senators agree with him as to that. I think when a rate is challenged they can take into consideration other rates between the same points and for such use as may be legitimate and proper in determining whether or not the rate charged is an excessive rate.

Now, in the case put by the Senator, when he comes to illustrate what is meant by discriminatory, he comes to an absolute agreement with me as to what this bill means. We all know that the rate from New York to San Francisco is a very low rate. I do not know exactly what it is, but we will say it is a dollar from New York to San Francisco on first-class goods. I do not know exactly what the rate from New York to Denver is, but we will say it is two dollars and a half, for the sake of illustration, on first-class goods.

Now, what will be the complaint before the Commission if this bill becomes a law? The complaint will be that the rate from New York to Denver, as compared with the rate from New York to San Francisco, is excessive, that it is too high, and in that way it is unjustly discriminatory. In no other sense can the question of discrimination be raised under this proposed statute. In no other sense could they undertake to deal with the subject.

It will not be claimed that under this law the citizens of Cincinnati, for instance, could go before the Commission and say "the rate from Cincinnati to Atlanta is \$1," or whatever it may be, "and the rate from New York, twice the distance, is only the same, and therefore we are discriminated against." The Commission could not entertain any such complaint. That is the character of discriminations we have heretofore dealt with.

The other idea that the bill undertakes to deal with is not at all enlarged by the use of the words "unjustly discriminatory," the operation of the bill being confined to a single line, as the Senator from Iowa contends, because it is a question whether under all the circumstances the rate from New York to Denver in the case I put is too high.

Mr. DOLLIVER. Mr. President, unless it can be shown in such a case that the rate from New York to Denver is too high, the evidence is then conclusive that the discrimination, whatever it is, is neither unjust nor unreasonable.

Mr. FORAKER. Certainly; and now the Senator answers himself. In answering whether or not the rate is too high he answers whether or not there is discrimination. If the rate be not too high there is no discrimination. That is just what I was contending for.

But now I want to get back to where I was. I was pointing out that in the House the framers of this bill, by the report, as they have informed us, have shown that they did not undertake to deal with any of these questions, except only whether or not

rates were too high. They ignored everything else, and why did they ignore it? They ignored it because they found out that it would be impossible, in the first place, in my judgment, to deal satisfactorily in a measure of this kind with these other difficulties, and because, in the second place, they, too, by their proposition to enact this law without any reference to these other complaints paid tribute to the existing statutes.

They knew, just as we know now, that under the Elkins law, if the Department of Justice will only put it into operation, they can find a remedy for every complaint, and a better remedy than could be provided by such a bill as this, by simply a proceeding in court. That being the kind of law that we have, I have supposed all the while that we could best legislate to provide efficient remedies by strengthening and broadening it and by making the proceeding under that law without expense to the shipper. I set about doing that. It never occurred to me that anybody would become more intent on passing this particular kind of government rate-making legislation than they would be on remedying the evils it is claimed that this legislation is intended to remedy, but in that I seem to have been mistaken.

That law, as I say, provided that when a complaint was made before the Interstate Commerce Commission, and the Interstate Commerce Commission was of the opinion that there was a reasonable ground for the complaint, it might bring suit on behalf of the shipper to enjoin the rebate or to enjoin the discrimination. It said nothing at all about excessive rates. It did not even mention them. Nobody asked for any legislation on that account. Now, however, that excessive rates are being talked so much about, I think we should provide for them; and so, in proposing to amend that third section of the Elkins law, I have provided that, on complaint of the shipper that he is being charged an excessive rate, the Commission shall so far investigate that complaint as to determine whether or not there be reasonable ground to believe that the complaint is well made, and if so, the Commission shall, if the shipper so request, stop its hearing there, if the case is to be proceeded with, and shall at once send it to the Department of Justice, with a statement of the complaint and a brief statement of the facts relied upon to sustain it. Thereupon it shall be the duty of the Attorney-General to send it to the proper district attorney, who shall immediately, without any delay whatever, without any option to him, bring a bill in the circuit court: and it shall be the duty of the court immediately to postpone all other business and proceed summarily to hear that complaint and to pass final judgment upon it. The bill will provide, as I propose to amend it, that this proceeding shall be in the name of the Government, at the expense of the Government, and without any expense whatever to the shipper.

Mr. President, it seems to me, in view of our experience with this statute, that with these amendments it will give a more certain, a more speedy, a less expensive, and more efficient remedy than anything that has been suggested.

Why should this be at the expense of the Government, instead of at the expense of the shipper? For this reason: No shipper who is subjected to an unjust rate suffers alone; he is only one of a class. There may be hundreds, there may be thousands, of shippers who are prejudicially affected by that

rate just as the complaining shipper is. The proceeding, therefore, should be in its nature a quasi public proceeding on behalf of all who are interested. That kind of proceeding can not be entertained by the courts, unless we by statute so enact. Therefore I undertake to confer the power upon the court in such a case as that to entertain a bill setting forth that complaint and asking for relief against it. I have provided that that proceeding shall be not only in the name of the Government, but at the expense of the Government, and without any expense whatever to the shipper. The reason shippers have not had the relief which they should have had is largely due to the fact, Mr. President, that no shipper feels like going to law with a railroad for his antagonist, and he will not do so unless he have a grievous case that he can not well longer endure; but if you make his remedy easy, if you make it without expense to him, if you make it in the name of the Government, the very minute he makes a complaint and the Interstate Commerce Commission investigates that complaint and comes to the conclusion that there is probable ground for it, and then notifies the railroad company, the railroad company, knowing that it is to be sued, not by a shipper but by the Government, without expense to the shipper and at the expense of the Government, will in every case, I think we may safely say, quickly adjust that difference with the shipper if it can possibly do so. No railroad would care to be prosecuted in that way if the complaint were a just one; they would resist only unjust complaints; and in that way we would get rid of much of the litigation that is talked about.

Now, according to the way I have proposed to amend this section, the Interstate Commerce Commission would entertain this complaint, and the shipper, when he files his complaint, will be given an option to say to the Interstate Commerce Commission, instead of proceeding under the Hepburn bill—I will call it that for the sake of intelligently referring to it—and having a full hearing before the Commission and then going into the court under this broad review amendment, which it is insisted shall be put upon this bill, and which I think the probabilities are will be put upon it—the shipper will say: "Instead of proceeding before the Commission, and then proceeding again and doing it all over again in the court, I would rather have the Government take up my battle and fight it for me in the court in the first instance. I ask you, therefore, to send this to the Department of Justice, and have the proper district attorney bring the suit, and I will look on and make suggestions while the fight proceeds and the Government pays the bill."

Mr. BACON. Will the Senator permit me to ask him what he means when he designates definitely by the word "this"—"this broad review?" What broad review does the Senator refer to.

Mr. FORAKER. I said "this broad review" that has been so much discussed here in this Chamber.

Mr. BACON. We have heard quite a number of suggestions as to review and the breadth that it should have. The Senator, being very active and well informed in the matter, and doubtless having information upon which he predicated that expression, I wish—not for argument, but for information—to ask—

Mr. FORAKER. I will give the Senator the information if I can —

Mr. BACON. What is the view of the Senator as to the breadth of the review that is contemplated and which he says he thinks will be incorporated as a feature of the bill?

Mr. FORAKER. Mr. President, in the remarks I made here on the 28th of February, I dealt with that subject and expressed myself fully in regard to it; but I have no objection to briefly restating it. I said in those remarks that we were proposing by this bill to command the Interstate Commerce Commission, when a rate was challenged and found to be unreasonable and unjust, to set it aside and substitute in place of it a rate that would be just and reasonable and fairly remunerative. That did not mean a confiscatory rate nor an extortionate rate.

I said in that connection that as to a confiscatory rate on the one hand or an extortionate rate on the other hand, it was my opinion that the court was open to the carrier whose property was about to be confiscated or to the shipper who was being subjected to an extortionate rate to apply for a remedy, without anything being put in this statute on the subject; but I said, as between the extortionate rate on the one hand and the confiscatory rate on the other, there was a wide latitude. Anywhere between the two extremes the Commission might fix a rate, as to which it might be contended that it was just and reasonable and fairly remunerative, and being a legislative act, it would not be subject to review by the courts unless we should so say. But I said, having commanded them to make a just, reasonable, and fairly remunerative rate, we ought to lodge authority somewhere to revise their work, and say whether or not they had complied with the command of Congress—not that the court should make the rate, but merely ascertain whether the Commission had made a just and reasonable rate. I illustrated that in this way: I said the Commission might make a rate which would yield a return of 6 per cent on the property employed in the transportation; that I did not doubt any court would hold was a just, reasonable, and fairly remunerative rate. They might put it so low as to yield only 4 per cent. About that the courts might differ. It might be so low, again, as to yield only 2 per cent.

I said I thought the court would hold in that case that the Commission had failed to comply with the command of Congress, or had failed to fix a just, reasonable, and fairly remunerative rate, and that the court would say so if we gave it the authority. That is the kind of broad review I have been talking about. I have explained it just as I did when I first spoke, but more briefly, because I do not want to go into it in the extended way in which I then did.

Mr. BACON. What I desired to ask the Senator was whether he meant by that expression a review that would put it into the power of the reviewing court to review the entire action of the Commission?

Mr. FORAKER. I think so.

Mr. BACON. Review it *de novo*?

Mr. FORAKER. When the Senator says "the entire action of the Commission," I presume it would be necessary to go over the entire action; the bill as it now is, when this question does



get before the court, requires the court to go over the entire proceeding, for the bill as it now is——

Mr. BACON. The Senator does not take my inquiry.

Mr. FORAKER. If the Senator will wait just a moment, I think he will see that I do; but I will suffer another interruption, and be glad to be interrupted again. If the Senator so desires, I will hear the Senator now.

Mr. BACON. Mr. President, thanking the Senator for his courtesy, I will say that I was more desirous to get from the Senator what he intended to be understood as meaning by the expression "this broad review." If the Senator will pardon me a moment, I wish to know whether the Senator had in mind a review which would simply cover the law questions in the case—not only the constitutional, but other law questions—or whether he meant a review of the entire action of the Commission, involving not only legal questions, but all questions that might grow out of the exercise of discretion?

Mr. FORAKER. Certainly, Mr. President; all questions—the evidence, all the circumstances, and everything else. I do not think a court could intelligently determine whether or not a commission, in fixing a particular rate as just and reasonable and fairly remunerative, had acted in compliance with the command of the statute unless the court was possessed of all the facts that operated on the mind of the Commission.

Mr. BACON. I understand the Senator by that means to accomplish that which he has suggested on some previous occasion—that this really ought to be with the court, if it is to be exercised, and not with the Commission; that the Commission really would, under the view of the Senator, be very little more than those who would suggest, and that the court at last would be the tribunal which would determine and fix the rates. Is that the view of the Senator?

Mr. FORAKER. That is the view, though I might state it somewhat differently from what the Senator has stated it.

Mr. BACON. I am asking that for the purpose of asking the Senator a succeeding question when I fully understand what his proposition is.

Mr. ALDRICH. With the permission of the Senator from Ohio [Mr. FORAKER], I will suggest to him that the proposition of the Senator from Georgia [Mr. BACON] is a very broad one—that the court shall fix the rate.

Mr. FORAKER. No; I did not observe that the Senator from Georgia said that. Did the Senator ask me whether or not I advocated the fixing of rates by the court?

Mr. BACON. No; the Senator from Rhode Island [Mr. ALDRICH], I think, does not exactly state what I said; and, with the permission of the Senator, I will endeavor to again state it.

Mr. FORAKER. I am going to speak presently as to what the power of the court is in respect to fixing rates——

Mr. BACON. Mr. President——

Mr. FORAKER. And if the Senator will only yield to me until then, I think I will answer what is in his mind.

Mr. BACON. I want to correct what the Senator from Rhode Island [Mr. ALDRICH] suggested as to what I had said. I did not intend at least—and I do not think that the RECORD will bear out the statement—to say that the purpose was to have the court fix the rate.



Mr. ALDRICH. The Senator used that language.

Mr. BACON. The Senator will pardon me. Let me make my statement. What I think I substantially said was, that would be the effect of it; not that de novo the court should fix the rate, but that if the Supreme Court, the court of final resort, had the review of all the features of the action of the Commission, not only including law questions but including everything which would arise out of the exercise of discretion—if they had the whole subject-matter thus brought before them for determination, the effect would be the same as if they fixed the rate.

Mr. FORAKER. Let me answer that question, as the Senator has now modified it; and I hope the Senator will let me proceed.

There is nothing whatever in anything I said, and I did not imagine there was anything in what the Senator asked me, that indicated that I was contending that any court—the Supreme Court or the circuit court—should fix the rate. In the case put by the Senator, if the Commission had fixed a rate which became the subject of judicial review, the only question would be whether or not that particular rate was a just and reasonable rate, and that is simply and purely a judicial question. The court would not substitute another rate in place of that rate.

Mr. ALDRICH. Will the Senator from Ohio allow me to ask a very brief question of the Senator from Georgia?

Mr. FORAKER. Yes; very well.

Mr. ALDRICH. Does the Senator from Georgia think that a court can ascertain whether the constitutional rights of a party have been invaded by an order without an inquiry into the facts as well as the law?

Mr. BACON. That is a pretty broad question. It is an abstract one. In a concrete case the question could be very much more easily answered. Of course there is no case that does not have facts connected with it, and out of the facts arises the law.

Mr. ALDRICH. The Senator was inveighing, as I understood him, against a proposition to allow the courts to investigate the facts, and I could not see any other process by which they could ascertain them.

Mr. BACON. If the Senator will pardon me, I desire to say I was not inveighing against anything. I was trying to get a statement from the Senator from Ohio as to exactly what he meant by the expression "this broad review." As I have suggested, the purpose of my inquiry was to ask him another question predicated upon a reply to that. That was the purpose I had, but as the Senator from Ohio said he preferred to go on, I refrained from asking the other question.

Mr. FORAKER. I do not wish, of course, to be discourteous to the Senator or to cut him off.

Mr. BACON. I do not so consider it at all. I do not understand the Senator to be in any manner discourteous.

Mr. FORAKER. I have no objection at all to yielding at any time to a question. But if the Senator will read the remarks I made on February 28 he will find that I dealt at some length with this subject. I have undertaken to state exactly what was the effect of that which I then said. As the Senator from Rhode Island has so pertinently suggested, no court of review could determine whether or not a given rate was confiscatory in one case or extortionate in another without not

only looking through the proceedings of the Commission, but also looking at all the facts and hearing all the testimony that might properly be offered. That would apply, therefore, to a constitutional or restricted review, as it has been called, just as much as it would to the broad review about which I have been commenting.

I was about to say, when the Senator interrupted me, that one criticism that I think we have a just right to insist upon as to this bill is that in the proceeding that it does provide for, where the court reviews any action brought by the Commission to enforce its order, the language of the statute is that the court shall review with a view to determining whether or not the order was regularly made; that is all; not whether it was a lawful order, not whether it was in compliance with the command of the statute, but whether or not the proceeding had been regularly instituted and proceeded with.

How absolutely without value that is as a remedy, Senators will realize when their attention is called to the fact that this proceeding which the courts are to determine the regularity of is by the statute made an irregular proceeding. There are no pleadings to be filed; there is no bill, no answer, no demurrer, no motion, no anything. A shipper may write a letter and make a complaint, and immediately the machinery provided by this bill and the existing law is set into operation. Nobody comes and makes formal answer. They come and answer each according to whatever the suggestion may be that is in his mind that he desires to make. Testimony is taken; and not only is it the duty and practice of the Commission to hear all that may be brought by the parties, but the language of the statute is that the Commission shall proceed in its own way, on its own motion, without a suggestion from anybody, to get any kind of evidence on which it may see fit to predicate an order. A greater cheat and fraud and humbug could not be suggested—I do not want to use offensive language, but I want to use expressive language—than is employed in the review provided for in this bill; in suits to enforce the orders of the Commission the court shall look at nothing except only to see whether or not the order was regularly made, whether an irregular proceeding, commanded by the statute to be such, is a regular proceeding. There is no ground of defense whatever in such a provision.

It is to avoid all such troubles as that that I want the amendment for which I am speaking to be added to this bill. It is not in conflict with any provision of this bill, but it is a remedy in and of itself which the shipper shall have a right to resort to as an alternative remedy.

Mr. TILLMAN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from South Carolina?

Mr. FORAKER. Yes.

Mr. TILLMAN. I should like to ask the Senator if it is not possible or probable that the men who drew this bill, in using the words "regularly made," did not have in mind to limit the courts to the question whether or not the Commission, acting as the instrument of Congress, had obeyed the law of Congress in its proceedings, and that there was no purpose to have the court try the case itself and determine whether or not the rate

was other than lawful—in other words, whether it had been made according to law?

Mr. FORAKER. Well, Mr. President, the Commission——

Mr. TILLMAN. I am merely asking for the Senator's view on that supposition.

Mr. FORAKER. I take pleasure in giving the Senator the benefit of my view. When I recall that the existing law provides that the court, when called upon to enforce an order of the Commission, is authorized to hear fully and determine whether or not the order was lawfully made; when I recall that the bill framed and sent to the Interstate Commerce Committee of the Senate by the Interstate Commerce Commission provided carefully that the review of the court should be to determine whether the orders of the Commission called in question had been lawfully made; when I remember that this law has been in force all these years, and was the first proposition that was brought before our committee, and that not until the Hepburn bill and the other bills introduced about the same time were brought forth, did anybody hear of such a thing as confining the court to the question whether or not the order had been regularly made—when I recall all that, I think it is very clear what was intended, and that is that the Commission should hear a complaint and, in the irregular way in which the Commission proceeds, should make an order. If the railroad refused to carry it out, then the Commission should bring a suit in the court to enforce its order, and in that proceeding the court could determine not whether the order had been lawfully made—which would be to determine whether or not it had been made in accordance with the command of Congress—but whether or not it had been regularly made—that is to say, whether or not notice had been given to the other party in time, whether or not anybody had been allowed to come before the Commission, whether or not testimony had been heard, whether or not the requirements of the statute in such an irregular proceeding had been complied with. There is not anything about whether it had been made in accordance with the statute under which the Commission was acting.

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Minnesota?

Mr. FORAKER. Certainly.

Mr. CLAPP. I desire to call the attention of the Senator to this fact: Whatever may be the strength of the legal position of the framers of this bill, the suit to which the Senator from Ohio calls attention has nothing whatever to do with the suit which the carrier institutes to protect his rights under the order of the Commission.

Mr. FORAKER. Mr. President, if the Senator from Minnesota had listened more attentively he would not have interrupted me to say that, because that is exactly what I did say. The bill does not provide for a suit being brought by the carrier. I was speaking of that provision of the bill where the Commission is authorized to bring a suit to enforce its own order.

Mr. CLAPP. Yes; but the Senator was insisting that under the suit the only question that could be raised was the regularity of the order.

Mr. FORAKER. Certainly; and I do still.

Mr. CLAPP. The history of this thing is simply this——

Mr. FORAKER. Can not the Senator give that in his own time?

Mr. CLAPP. That is the trouble. Every time this bill is assailed, when we want a discussion of the bill we are asked to wait until its opponents get through.

Mr. FORAKER. I yield to the Senator. I want the bill to have "a square deal" [laughter], and I want to do all I can to give it one.

Mr. CLAPP. Independent of "a square deal," this debate is doing no good unless it is based upon an analysis of this bill. It will not do simply to stand here and deliver addresses upon questions arising under the pending bill. I am not criticising the Senator from Ohio in saying that, but I am justifying my own course. I think we ought to debate this bill, and, as these questions arise, discuss them so as to see whether we are right or whether we are wrong. If we are wrong, we are as anxious as anybody else to be placed right.

Under the existing law, the order does not as a legal matter go into effect, and the Commission has to bring suit to enforce it. That involving the order itself, of course, under the present law, the carrier can raise these questions. The purpose of this bill is to change that rule and put the order into effect at a given time named in the proposed law or else set by the Commission in its order. This bill as it is now framed contemplates that, before the order goes into effect, the carrier may be heard; in other words, the order goes into effect unless suspended or vacated by a court.

The action provided for on page 16 of the bill, to which the Senator from Ohio calls attention, is a sort of supplementary proceeding, not involving the question of the constitutionality of the order; but after the carrier has had its opportunity to test that question, then the bill provides—

If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the circuit court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order.

That is, after the carrier has had its opportunity to combat the order on the ground that it is an invasion of constitutional rights; and then, in the supplemental proceeding, the carrier has neglected or failed to interpose its objection, and the order has gone into effect; this proceeding is simply to enforce it. There is no occasion, it seems to me, that in that proceeding there should be any question except as to the regularity of the order.

Mr. FORAKER. Mr. President, the indignation of the Senator from Minnesota is rather surprising to me. If he had been in the Chamber during all the time I have been occupying the floor, he would have known that I have already commented on the fact that, in my opinion, the court, under this bill as it is framed, could hear a question where a constitutional right has been infringed, but that, without action on our part, it could not inquire as to the reasonableness of a rate.

Mr. CLAPP. Then, if that be true, why is the Senator attacking the provision on page 16?

Mr. FORAKER. Because it is a fraud, a cheat, and a humbug, and I intend to expose it as such. That is why; and I am not going to do it in essay form, either.



Now, Mr. President, I call attention to the fact that under existing law, when a carrier refuses to obey an order of the Commission, the Commission has authority to go into court and sue the carrier to compel it to obey the order, and the court will determine whether the order was lawfully made.

The provision of existing law is that in such a proceeding as that the inquiry of the court shall be as to whether the order was lawfully made. That means not only a regular proceeding before the Commission, but it means also a rate, if that be the subject-matter of the order, that is in accordance with the command of Congress that it shall be a just and reasonable rate. And the court in such a proceeding will hear everything and determine whether the order was lawfully made.

Mr. CLAPP. Is it not a fact that under existing law that is the first suit? I do not want to be considered——

Mr. FORAKER. I have already commented on that. Under the existing law the Commission has no right to make a rate to be substituted——

Mr. CLAPP. No; but under existing law the suit brought by the Commission is the first suit brought, the first occasion for bringing any suit. Until that suit is brought there is no occasion for applying to a court.

Mr. FORAKER. Does not everybody know that without being told, who knows that the law as it stands does not authorize the Commission to make a rate at all? It is only because we are now proposing to change the law and to authorize the Commission to make a rate and compel the carrier to put it into operation, unless he submits to a penalty of \$5,000 a day for not doing it, that the other provision about applying for an injunction is incorporated in the bill. I have already commented on that. I do not want to go over it again.

Mr. CLAPP. I do not ask the Senator to go over it again. But I submit, while everybody ought to know that, if a man had listened to the Senator's argument, in which he seeks to draw a parallel between a suit under existing law and a suit provided for in section 16 of this proposed law, the supplemental law, he would draw the conclusion that there was some other provision in existing law.

Mr. FORAKER. I have already argued that all I care to; I think I have said all that I should be required to say on that subject.

There is no provision in this bill authorizing the hearing by the court of any complaint except only that the rate is extortionate on the one hand or confiscatory on the other. As to rates between those, there is no authority for a review by the court at all; and that is what I want to put into the bill, so that the court may make such a review.

Mr. ELKINS. Mr. President——

Mr. FORAKER. Let me finish, and then I will yield. When the carrier refuses to obey an order that the Commission makes, under the law as it is to-day the inquiry is as to whether the order was lawful. Under the law as it will be if this bill is enacted into law the court will have jurisdiction in such suits to inquire not whether the rate is lawful, not whether the Commission has obeyed our instructions and given a just and reasonable and fairly remunerative rate if we adopt the bill in that form, but the inquiry will be whether or not the Commission has proceeded regularly. I do not need to call on any-



body to tell me why that was put in. Everybody knows. It was put in there to restrict the power of the court, in so far as it is competent by statute to do it, to inquire as to an invasion of purely constitutional rights of property, and nothing else.

Now, in the bill framed and sent to us by the Interstate Commission they provided that upon this same inquiry the question to be determined by the court shall be not whether the order had been regularly made, but whether the order had been lawfully made. Never until the Hepburn bill and those that came in about the same time did anybody presume to ask the Congress of the United States to limit a court in reviewing the question whether a commission to which, as the Senator from South Carolina [Mr. LATIMER] well said this morning, we are proposing to give the most autocratic power had, in the exercise of those powers, obeyed our command or violated our command. They undertake to do it by inserting the word "regular." There is not any secret as to what was meant by it, but the character of such a proposed amendment of the law does not appear until it is remembered that this inquiry is to be, whether an order was regularly made in a proceeding which under this proposed statute is commanded to be irregular. It could not be anything but regular. You could not violate the statute by any kind of departure from ordinary judicial proceedings in which the Commission might see fit to indulge.

This much I started out to say, but I would like——

Mr. ELKINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from West Virginia?

Mr. ELKINS. Will the Senator from Ohio allow me just one question?

Mr. FORAKER. I will; but I should like then to conclude what I have to say.

Mr. ELKINS. I should like to ask the Senator how he construes the words "determine and prescribe what may in its judgment?" If those words remain in the bill, as between a confiscatory rate and an extortionate rate, is not the finding of the Commission final and can not be reviewed?

Mr. FORAKER. Yes. The insertion in this bill of the words "in its opinion"——

Mr. ELKINS. "In its judgment."

Mr. FORAKER. "In its judgment;" that is to say, they shall ascertain in the first place whether or not, in their opinion, a rate that is challenged is unjust and unreasonable; and if so, they shall set it aside and state what in the judgment of the Commission is a just and reasonable rate.

If you get into the court to review this question of regularity, the question will be whether an irregular proceeding has been regular, and whether the opinion in the one case as to the rate set aside and the judgment of the Commission as to the rate substituted are, in fact, the opinion and judgment of the Commission. In other words, there is no review possible, for who can say the rate was not what the opinion of the Commission was it should be? It is a craftily drawn statute, or bill—I hope it will never be a statute in this form—intended deliberately by lawyers who knew what they were doing to take away from the court all power of review with a view of determining whether a rate in a given case is just and reasonable.

Mr. BACON. Will the Senator pardon an interruption?

Mr. FORAKER. Certainly.

Mr. BACON. I make it for the purpose of getting the Senator's interpretation of certain sections to which I desire to call his attention. On page 11 of the bill there is evidently a contemplation of a resort to the courts on the part of the carrier in case it deems the rate to be confiscatory or otherwise unlawful. That is true, is it not?

Mr. FORAKER. That is what I have already commented on.

Mr. BACON. Very well. The Senator will pardon me a moment. This is only suggestive. The question I wished to ask the Senator is this: The language he complains of on page 16 relates to the case of a carrier who fails to obey the order of the Commission.

Now does not that relate to a case exclusively where the carrier has failed to avail himself of the opportunity to go into court and where he simply stands defiant of the Commission; and is it not the case in which the law seeks to provide that not having challenged the lawfulness, if you please, of the order of the Commission, not having sought by resort to the courts to set aside the order of the Commission, thereby recognizing the finality of the order, the carrier is in disobedience of it? If that be the case, is it not proper that the inquiry should be limited to the question whether the order was regularly made and the carrier duly served?

Mr. FORAKER. The Senator has, I think, failed to perceive the character of the argument I have been making. I have been contending that under the provision to which the Senator calls my attention, where the carrier may apply to the court, it has no authority, because the statute does not give it any, to apply except only where the rate is confiscatory, or, in the case of the shipper, where the rate is extortionate. Now, I am talking about the rates that are intermediate between the two extremes, those that, according to the proposed statute, are to be just and reasonable and fairly remunerative. But we are bound to assume that most of the rates would fall within the latter class. I say the proposed statute gives no opportunity whatever for a review in court of the question of reasonableness. It gives no opportunity to the court to review or to the carrier or the shipper to apply to the court upon that question—

I want the attention of the Senator from Georgia, if the Senator from Kansas will let me have it, for the Senator from Georgia interrupted me, and I am anxious to hurry along without being further interrupted if possible. Therefore, except only as to the invasion of constitutional rights this bill gives no remedy at all. They are the only ones that can be contemplated by the provision to which the Senator has called my attention.

When it comes to the question whether a rate is reasonable in such a case as the other provision relates to, where the carrier has refused to obey and the Commission has brought suit, why should not the court be allowed to examine that question, and see whether the rate prescribed is just and reasonable and fairly remunerative? Does not Congress want the Commission to make just and reasonable and fairly remunerative rates? Could not the court be allowed, if it is going to review it at all, to review that particular question?

But now, Mr. President, that brings me to another phase of this bill that I want to speak about. I did not have it in mind to speak about it in this connection, but I will. What is it that this bill provides? That the Commission shall fix a just and reasonable and fairly remunerative rate.

When I spoke here as long ago as last December I pointed out that that was such an indefinite standard that it was not any standard at all. All that Congress can do, if it has power to make rates at all, is to fix just and reasonable rates. If we confer that power on the Commission, we have divested ourselves of every particle of the rate-making power we have and given it all to the Commission. And yet Senators tell me there is no delegation by this provision of legislative power.

Are these words sufficient to create a standard? I contended that they were not as long ago as the time I have mentioned. I contended that they were not, at considerable length, when I spoke here on February 28. I want to renew that contention—not to argue it over again, but to call attention to a decision rendered by the Supreme Court of the United States since those arguments were made. I refer to the decision of the Supreme Court in the Michigan Tax cases, the opinion being delivered by Mr. Justice Brewer. I have it before me. When I spoke here in December I took the position that if we proposed to authorize the Commission to make rates we had power to do it, if we have power to make rates at all. But I said in doing so we must be careful so to confer the power as to make their duty with respect to rate making purely administrative. In that behalf we must be careful not to confer upon the Commission any exercise of judgment or discretion. If we did, it would be fatal, because if the Congress have power to make just and reasonable rates, it is the judgment of Congress that the people are entitled to and not the judgment of some commission.

Now, I gave some illustrations of what I meant by that. I called attention in that connection to the fact that in Iowa as long ago as when the first "granger law," as it was called, was enacted, back, I think, in 1873 or 1874, this question arose and they met it. They met it in one of the ways in which it must be met, and one of the few ways in which it is possible to meet it. They divided the railroads into classes—Class A, Class B, Class C, Class D—and then they provided that the rates on everything they could think of to alphabetically enumerate, from apples down to watermelons, should be fixed according to a table which they set out in their statute: on freight of a certain kind, which they named, over a road falling within Class A, so much per mile; so much per mile on a certain commodity over a railroad that fell in Class B, Class C, Class D, and so on, respectively. But what was the result, and why did they do that? Why did they go to the trouble to classify roads and to fix the rates with that care? Because they recognized that they could not intrust legislative discretion or judgment to a commission or to any official of the law. They recognized that they must establish a standard to which the commissioner could conform by simply making a mathematical calculation. He could inquire what class the road belonged to, what the particular freight was, how many miles it was to be shipped, and then taking the table he could figure up what the rate was.

They did the same thing, only not so elaborately, in Wisconsin. They classified the roads and fixed the rates, in principle,

according to the Iowa statute. They did the same thing, in effect, in Minnesota, but instead of authorizing the commission to make rates they authorized the commission there to make a recommendation as to what the rate ought to be, and if the road did not see fit to adopt the recommendation, which the commission had a right to make, it was the duty of the commission to go into court and get an injunction enjoining the railroad from charging any other rate, or a mandamus compelling it to charge only the rate fixed.

Mr. BACON. Mr. President—

Mr. FORAKER. If the Senator from Georgia will bear with me for just a moment, another way to confer this power and make it administrative in character would be for Congress to say the Commission shall fix rates at so much per ton per mile. In other words, as the Senator from South Carolina [Mr. TILLMAN] the other day said he was coming more and more to believe ought to be the rule, to fix rates on a flat mileage basis. That, I believe, is almost his exact language. The Senator from South Carolina nods his assent, and thus we have that established.

Mr. GALLINGER. The Senator from Ohio does not assent to that.

Mr. FORAKER. I do not assent to that. If I were to assent to that and that were to become the law, I do not know what the growers of strawberries in South Carolina would do, or what the peach growers of northern Georgia, who are so ably represented by the Senator from Georgia, would do. They are making a great clamor to me for fear there will be legislation enacted here that will put them at a disadvantage in getting into the market at New York as compared with the peach growers of Delaware.

Only a few days ago—I have already referred to it in the Senate, but I will do it again, as perhaps I have the attention now of some Senators who did not hear me then—I received two letters by the same mail—one from the citrus-fruit growers of southern California, complaining of the Supreme Court because of a decision it recently announced, and claiming that they were subjected to unjust rates, unjust conditions, and the other from a place in Delaware—Medford, I believe it was, or some such name as that; Milford, possibly—complaining that the people in southern California had practically the same rate from California into New York that they have from Milford, Del. A flat mileage basis would make impossible that kind of rate making.

Mr. TILLMAN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from South Carolina?

Mr. FORAKER. Certainly.

Mr. TILLMAN. The Senator says he is opposed to the idea of a flat mileage basis.

Mr. FORAKER. Yes.

Mr. TILLMAN. Is not that in accordance with the Declaration of Independence?

Mr. FORAKER. That is going back a long way to fix rates.

Mr. TILLMAN. That is the foundation of this fight, if we are ever going to settle it right, because if the people of Delaware are discriminated against by the local roads and are compelled to pay an equal amount on their peaches to get them to New York that the people of South Carolina are paying—and we



do not pay any more than they do, though we are 800 miles away—it is wrong. Now, I say that, and I will stick by it, although I am a peach grower myself in South Carolina.

Mr. FORAKER. I think the peaches will be pretty hard and sour by the time the Senator gets home if we are to make that kind of a law. The greatest achievement of the railway system of this country has been the inauguration of a system of rate making and charging for the transportation of freight that has made every section of this country accessible to every other section.

Mr. GALLINGER. On a commercial basis.

Mr. FORAKER. It is done upon a commercial basis.

The making of rates is very much misunderstood by some people, perhaps possibly by myself, but as I understand it, there is really no such thing as individuals making rates. The laws of trade and commerce make them. The railroads which haul peaches out of South Carolina do not want to charge so little for taking them to New York as will be equal only to a like service rendered for the transportation of peaches from near-by Delaware, but they do it. Why? In order that the people of South Carolina may grow peaches, and that they may have a market for their peaches.

Mr. TILLMAN. Mr. President—

Mr. FORAKER. The Senator will bear with me for a moment. The question all the while is not whether they are charging too little from South Carolina to New York, but whether they are charging too much from Delaware to New York. And if they are not charging too much from Delaware to New York, who is harmed? Not the people in South Carolina, because they have a market that they could not get into except for the low rate; not the people of Delaware, if they are charged only a just and reasonable rate, because the people of South Carolina are permitted to come into that market in competition with them on no better rate than they have, and surely not the consumers in New York who are thus given two sources of supply and the benefit of competition.

Mr. TILLMAN. Now, will the Senator permit me?

Mr. FORAKER. In a minute. I want to make plain that no one can complain. Not the people of South Carolina; not the people of Delaware; not the people in New York, for they have two sources from which to draw their supplies instead of only one. If the people of New York had to rely upon the peach orchards of Delaware alone for their supply, peaches would be worth a good deal more than they are now.

Mr. TILLMAN. Will the Senator permit me?

Mr. FORAKER. Yes.

Mr. TILLMAN. I want to say to the Senator that if he knew a little more about peaches and their growing he would not be arguing like he does for this simple reason: The peach crop in South Carolina begins to move to market the 1st of June, and it is done and gone, eaten up, before the Delaware peaches are ripe.

I want to say while I am on my feet that the complaint of the citrus-fruit growers of California was against the decision of the Supreme Court, which did not permit the shipper to route his fruit, thereby prolonging the time it is in transit and causing the fruit to rot by four or five days' delay, caused by



sending it some roundabout way to suit the railroad which has a monopoly of the business.

Mr. FORAKER. If that be true as to peaches, let the Senator take something else for illustration. I suppose the peaches in South Carolina and the peaches in northern Georgia ripen about the same time.

Mr. TILLMAN. About the same time.

Mr. FORAKER. They go into market in competition with each other, and as they are not equally distant from New York if the peach growers of northern Georgia had to compete on the mileage basis with the peach growers of South Carolina they would be at a disadvantage in the market in New York.

Mr. TILLMAN. You are speaking relatively of conditions as between the peach growers of Georgia and South Carolina and the peach growers of Delaware?

Mr. FORAKER. I was.

Mr. TILLMAN. I am contending that it is unjust and wrong in principle and practice for the railroad to charge the peach growers within 40 or 50 miles of New York as much as they charge us in South Carolina, 900 miles off. I will stand and die by that proposition.

Mr. FORAKER. It is all wrong when it applies to South Carolina and Delaware, but it is all right when it applies to South Carolina and Georgia.

Mr. TILLMAN. They are relatively as far from New York one as the other. There may be 75 miles difference.

Mr. FORAKER. Yes; or 150 or 200 miles, I should think.

Mr. TILLMAN. No.

Mr. FORAKER. Yes.

Mr. TILLMAN. I do not care; say 200 miles.

Mr. FORAKER. I will assume that; but it does not make any difference whether it is 75 miles or 150 miles or 200 miles. It is a great principle I am talking about.

Mr. TILLMAN. I stand by the Declaration of Independence side of it, and you have a new idea of it.

Mr. FORAKER. I have not any new idea. It is new only to the Senator from South Carolina.

Mr. TILLMAN. I heard—

Mr. FORAKER. Let me put another question to the Senator, which is suggested to me by the Senator from West Virginia [Mr. ELKINS]. But I want to answer first about the citrus-fruit growers of California. [To Mr. ELKINS.] Remind me of the cotton later.

The citrus-fruit growers of California brought suit, in which they asserted that they ought to be given the right to route their own fruit; that they ought to have the right to determine over what roads, shipping from California to New York, their fruit should go. The railroads contended that they ought to be allowed to control the routing. The Supreme Court decided upon the facts as well as the law of the case that the roads had that right and should have that right; but what were the facts? Why is it the fruit growers of California are making complaint? In that case it was established without any contradiction, beyond any question whatever, by testimony that was agreed to be correct, that the shippers wanted to control the routing so that they might divert their freight first to one road and then to another, that they might demand a rebate from them. And

one fruit company had exacted in two or three years' time prior to the bringing of that suit a hundred and seventy-five thousand dollars of rebates—the very thing we are trying to break up. If it had not been for the court intervening to set aside the order of the Commission and prohibiting and breaking up that kind of bad practice, it would still be going on.

Mr. TILLMAN. Mr. President —

The VICE-PRESIDENT. Does the Senator from Ohio yield further to the Senator from South Carolina?

Mr. FORAKER. Certainly.

Mr. TILLMAN. The Senator's principle is erroneous and wrong again. If the Senator himself were going from here to California, and some ticket agent said, "I am going to ship you via Cincinnati and St. Louis and Denver, and you shall not go any other way," the Senator from Ohio would kick, and kick very hard. He would not be bulldozed in any such manner. The man who has something to ship, and knows that he can get it to market quicker and to his advantage by one road, has a right to ship it over that road.

Mr. FORAKER. The record shows it got to market quicker when the railroad routed it and when no rebate was at stake than when the shipper routed it.

Let us think for a moment about this mileage basis. I am standing here by the side of the Senator from Iowa [Mr. ALLISON]. He represents an agricultural State. They send great quantities of grain of every kind to the seaboard cities; some for consumption there, most of it for export, perhaps.

Now, if they were to be charged according to the mileage basis, what would be the effect upon them? You can better imagine it than describe it. The farmers of Iowa compete in the markets of New York and Boston with the farmers of Vermont and New Hampshire and New York on butter and eggs and cheese and all kinds of dairy products, and they compete because they are able to get practically the same rate. If the farmers of New York and Vermont and New Hampshire are charged too high rates, they have a right to complain. But if their rates are reasonable, and the roads reduce rates to a low standard to enable people who have butter and eggs and milk in Iowa to send their products to the eastern markets and sell them there, it is a great blessing to the whole country. It is a good thing for Iowa. The mileage basis would take away from Iowa all possibility of competing in New York with New Hampshire and Vermont, and lose to that people that market.

Mr. GALLINGER. If the Senator will permit me, it must be a good thing for the consumer.

Mr. FORAKER. Just as I was going to say, as the Senator from New Hampshire has well suggested, it is a good thing for the people of Iowa, and a better thing still for the people of New York and Boston. Those great cities could not draw from near by a sufficient supply to enable them to have butter and eggs and milk and all these products which are brought these long distances under the present system. They could not have them at reasonable prices, except only under the system we have. They could not have them under the mileage system.

Mr. TILLMAN. Will the Senator permit me?

Mr. FORAKER. I want to ask the Senator from South Carolina about the cotton mills.

Mr. TILLMAN. I will meet the Senator on the cotton-mill basis or any other basis, but I want to ask, Does he imagine that any milk was ever shipped into New York City from Iowa?

Mr. FORAKER. I am told it is.

Mr. TILLMAN. It is condensed milk, then.

Mr. FORAKER. No.

Mr. TILLMAN. That would go——

Mr. FORAKER. Governor Cummins testified before our committee, as I remember it now, to the fact that butter and eggs——

Mr. TILLMAN. Oh!

Mr. FORAKER. And dairy products——

Mr. TILLMAN. Butter and eggs possibly.

Mr. FORAKER. Well, it is possible no milk is shipped that long distance——

Mr. TILLMAN. No milk, Senator.

Mr. FORAKER. Take out the milk, then. I am not trying to establish any one fact, but a great principle.

Mr. TILLMAN. I want the Senator just to look at this aspect of it. The farmer in Vermont, New York, and Connecticut is competing with the farmer in Iowa.

Mr. FORAKER. Certainly he is.

Mr. TILLMAN. What about the manufacturer in New York, Connecticut, and Vermont, who has his goods protected by the tariff and then is allowed to buy in the American market? This is a new idea. It is another protective tariff against the farmer in the near-by States in favor of the farmer in Iowa, is it not?

Mr. FORAKER. The Senator from West Virginia [Mr. ELKINS] was calling my attention just then, and the Senator will pardon me.

Mr. TILLMAN. The Senator from West Virginia will have enough to do to bother me on his own hook without trying to whisper into the ear of the Senator from Ohio.

Mr. FORAKER. He was not addressing himself to what the Senator is just now talking about, and——

Mr. TILLMAN. I was just trying to get the Senator's view.

Mr. FORAKER. Between both I did not hear either.

Mr. TILLMAN. I want the Senator's view on the relative justice of the idea that the farmer in these near-by States around New York City and Boston has to compete with the far-away farmer in Iowa. The railroads give the farmer in Iowa the advantage of low rates relatively as compared with the near-by farmer, while your New York and Massachusetts manufacturer is protected by the tariff against competition from anybody who might come into the field against him.

Mr. FORAKER. No American manufacturer is thus protected against other American manufacturers. All American manufacturers are put on an equality under the law.

Mr. TILLMAN. Of course; and I want the farmers to be on an equality under the law.

Mr. FORAKER. And, Mr. President, no class of people have a higher protective tariff levied on the importation into this country of the products they bring forth than the farmer.

Mr. TILLMAN. Yet the Senator is right here arguing for the protection of the Iowa farmer against the New York farmer——

Mr. FORAKER. No.

Mr. TILLMAN. By a railroad rate discrimination in his favor.

**Mr. FORAKER.** That is simply one of the mysteries of the tariff the Senator has not yet fully sounded the depths of. The Iowa farmer wants not only to produce butter and eggs, but he wants some place to sell his butter and eggs; and if there was a manufactory flourishing about him, he would have a home market there; and if they do not take all he has to sell, he can ship it off to New York, if he can find some railroad that will carry it at a rate cheap enough to enable him to sell it when he gets there in competition with the same products from near-by points.

**Mr. BAILEY.** Mr. President—

The **VICE-PRESIDENT.** Does the Senator from Ohio yield to the Senator from Texas?

**Mr. FORAKER.** Certainly.

**Mr. BAILEY.** If it be true that the distance is so great that on a mileage basis the people of New York could not be provided with the chickens and eggs from Iowa, to which the Senator refers, would not the necessary result of that be that many of the industries which are now concentrated in New York would be compelled to go nearer to the chickens and eggs in Iowa in order to give their operatives cheaper supplies? And the effect of that would be a wider and a juster distribution of the population and wealth in this country.

**Mr. FORAKER.** That is a very interesting question, and we will take it up and discuss it when we come to take up the revision of the tariff.

**Mr. TILLMAN.** This is the tariff.

**Mr. FORAKER.** It is too broad a subject for me to undertake to deal with in the midst of a speech that is devoted to rate making.

**Mr. TILLMAN.** But this rate making is in a sense a protective tariff. The Senator has been contending for a protective tariff by the railroads in behalf of the western farmer and against the farmers of New England and New York.

**Mr. FORAKER.** Mr. President, if the Senator will allow me to use the word politely, I will not allow him to becloud the issue. We are talking about rate making and I have said all the while, in the cases I have been putting for illustration, that the question is, whether the near-by rate was an unjustly high rate.

**Mr. BAILEY.** Mr. President—

The **VICE-PRESIDENT.** Does the Senator from Ohio yield further to the Senator from Texas?

**Mr. FORAKER.** Certainly.

**Mr. BAILEY.** I will simply remind the Senator from Ohio that the suggestion I made was directly in reply to the argument that we had to give these cheap rates in order to get commodities to the centers of population. I myself would like to take the centers of population a little closer to the cheaper commodities.

**Mr. FORAKER.** If the Senator will journey across the West he will find that the manufacturing industries there are flourishing. He will find that they are springing up in every direction. He will find that they do not follow chickens and eggs and ducks, but they grow up in every community, and wherever they do they constitute a home market where the farmers near by can find a place to sell their products.

**Mr. ALDRICH.** And they are not going up any more rapidly in any part of the United States than in the States of the



Senator from North Carolina and the Senator from South Carolina.

Mr. FORAKER. Everywhere. That reminds me that I wanted to ask a question about cotton.

Mr. TILLMAN. Is it, notwithstanding, the fact that most of our goods are shipped to China in competition with Germany and England and have not a dollar of protective tariff on them, but in the open field, with no favors to anyone?

Mr. FORAKER. Can any man inform me where they have a higher tariff than Germany has?

Mr. TILLMAN. I mean exports. We go to China to sell cloth in competition with Germany and England, and we do not get the benefit of any protective tariff. Therefore we do not get a square deal when our railroad rates are all in the interest of New York, and we can not get any fair play in the fixing of rates.

Mr. FORAKER. No other country gets any such benefit as that to which the Senator refers. But let me tell the Senator what his State is getting great benefit from, and that is from the system of rate making that is now employed. That has been the case especially during the last ten or fifteen or twenty years. Perhaps as recently as twenty years ago the first cotton mills were started in South Carolina, North Carolina, and Georgia, in competition with the cotton mills of New England, and now already those cotton mills have increased in number and in capacity until they are practically equal in number and capacity to the cotton mills of New England. And they have a great advantage over the cotton mills of New England—they are near by where the cotton is grown.

Mr. ALDRICH. Will the Senator allow me to interrupt him?

Mr. FORAKER. Certainly.

Mr. ALDRICH. There are no manufacturers in the United States who get more material benefit from the protective tariff than the cotton manufacturers of South Carolina. They understand it, too. The Senator from South Carolina may not, but the manufacturers do.

Mr. TILLMAN. Possibly they do, and possibly the Senator from Rhode Island could explain how and why this is true.

Mr. ALDRICH. I do not want to interrupt the speech of the Senator from Ohio by an explanation now.

Mr. TILLMAN. For my part I simply gave this illustration of the condition—that the cotton manufacturers of my State, so far from getting any benefit from the protective tariff at home, have to ship their cotton to China to get a market.

Mr. FORAKER. A great many other people have to ship to China to get a market. In our country here at home we consume all our necessities call for—all the cotton from the South as well as every other product that is brought forth in this country, whether in the South or in the North; and for the surplus which we have we must find markets abroad. They send from South Carolina to China only the surplus. If they can sell their cotton here at home they sell it here at home, in New York, for instance, and other near-by markets. They sell only the surplus abroad. We send only our surplus wheat and corn and other farm products abroad. We consume everything in this land that we can, and we consume almost an incomprehensible amount of the agricultural products that we



bring forth only because we have, under the protective tariff, multiplied all kinds of industries, developed our resources, multiplied every kind of business institution, and given employment at good wages to the tens of millions of people who toil.

Mr. TILLMAN. Nevertheless I should like to have the Senator from Ohio or either of the Senators inform me in what way a manufacturer in South Carolina who is shipping his product to China gets any benefit from the protective tariff here.

Mr. FORAKER. I was telling the Senator.

Mr. TILLMAN. The Senator then is very kind.

Mr. FORAKER. He gets the same benefit through the protective tariff that I suggested; but, Mr. President, here is the benefit which the Senator refuses to see.

Mr. TILLMAN. The difference is this—

Mr. FORAKER. He must see it. What is the cotton crop of the South?

Mr. TILLMAN. Last year about ten and a half or ten and three-quarter million bales.

Mr. FORAKER. How much of it was consumed in this country?

Mr. TILLMAN. About 4,000,000 bales.

Mr. FORAKER. Where was it sold? Who used it?

Mr. TILLMAN. Does the Senator mean the cloth? We had to send ours abroad, whereas you sold yours right around here, because it was a finer character than ours. You supply the home market with finer goods, which would be otherwise supplied by Europe if there was no protective tariff.

Mr. FORAKER. In other words, you do not make a desirable product, and therefore you can not sell it to Americans, South or North, and you send it off to the Chinaman or to somebody else who must have cotton, and he takes it from the South because he can not get it from the East.

But, Mr. President, if the Senator did not sell in this country 4,000,000 bales—and he could not if we did not have a protective system that had developed our industries and made a demand for it at home—he would have to sell the whole ten million and a half bales in China and then so glut the China market that he would not get half the price he is getting now.

Mr. ALDRICH. I was about going to remark that if the market were confined to China it would not be open for sixty days.

Mr. FORAKER. Now, there is another question the Senator was talking about, that the rate should be just and reasonable, and the Senator from Texas [Mr. BAILEY] insists that we shall strike out "fairly remunerative" and insert "just compensation." I want somebody to explain that term. The Senator is interested in the cotton mills of northern Georgia, and in North Carolina there are some, and in South Carolina, I believe, a large number.

Mr. OVERMAN. In North Carolina there are more than in any other State in the Union.

Mr. FORAKER. I thought that was true, but I was not sure about it.

Mr. BACON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Georgia?

Mr. FORAKER. Let me ask this question, and then I will yield to the Senator. Cotton is assembled at Memphis. It is a short haul across the country to the cotton mills of the South.

I do not know how much it will be worth a bale to haul it across, but just for illustration we will say it is worth \$2 a bale. That may be a very ridiculous figure to make; I do not know anything about what the rate should be. But it is a short haul across the country to the cotton mills of the South. It is twice or three times as long a haul from Memphis north by the way of Cincinnati and then northeast to the cotton mills of New England. And yet what is the result on rate making? The result is that unless the cotton mills of New England can get a rate that is substantially the equivalent of the rate the cotton mills of the South get, all the cotton will go to the cotton mills of the South, and the New England mills will have to go out of business. The railroads of the South, therefore, a standard being fixed on a reasonable rate to the cotton mills, conform to that, and they give the same kind of rate to New England, and thereby the New England mills get cotton.

Now, the Senator from Texas has returned. I asked him, in his absence, without observing that he was absent until I had asked it, to define this term, "just compensation;" and I was about to illustrate the difficulty I have in regard to it.

If by just compensation we are to fix a rate that measures the service rendered and we fix that rate for a haul of 400 miles across the country to the cotton mills of the South, what are we to name as a rate for 1,200 miles to the cotton mills of New England? Is it to be three times as much? It is all cotton; it all comes from the same point; it all goes to the mills; and if "just compensation" is to be the term employed, what do we mean by it? I do not ask this in a controversial sense. I ask it to get light on it. I know it is difficult, as the Senator from Texas said the other day, to adopt any term that is sufficiently definite to enable us to conform to it without having difficulty. That is the practical effect of what the Senate said.

Now, to take another case, does it cost the railroad any more, and therefore would the railroad be entitled to any more pay, if we are to measure its charge by the rule of just compensation, to haul a carload of dry goods from New York to Chicago than it would a carload of corn or pumpkins from Chicago back to the city of New York, the same distance, over the same road, and in the same car, probably, the same motive power, the same capital, the same crew who are to be employed? How are we to determine what is just compensation in the one case except only by considering what it costs the railroad company to render the service, and are we to apply that same rule in the other case?

Mr. BAILEY. Does the Senator desire me to interrupt him now with an answer?

Mr. FORAKER. I perhaps should not call on the Senator to do so now. I only wanted to say to the Senator that I am at a loss to know how, if I understand the term "just compensation," we could apply it without absolutely revolutionizing the whole system of rate making in the country. The Senator, as he has employed it, as I remember, has always said, "just compensation for the service rendered."

Mr. BAILEY. Mr. President, we can establish no standard in a matter of this kind—that is, a precise one; that is, we can fix no standard with the precision with which we can weigh or count—but it seemed to me that a standard which was definite enough to protect every private citizen of the United States in his property was definite enough to protect

the railroad in its service; and I chose the words "just compensation" more because they had been so repeatedly construed than for any belief that they differ from the words "just and reasonable." Indeed, sir, as I said the day before yesterday, if the law is to stand, it can only stand, in my opinion, because the court will translate the expression "just and reasonable" into the equivalent to a just compensation. I proposed the amendment more for the purpose of eliminating the objectionable words "fairly remunerative" than for any other purpose; but, proposing the change, I thought it desirable that the statute should follow the Constitution.

Now, with the Senator's permission, I want to answer his inquiry whether a haul for 1,200 miles shall be charged three times the price of a haul for 400 miles. Of course it costs the same to load and unload for a 4-mile haul as it does for a 1,200-mile haul; and making that allowance, I say to the Senator without the slightest hesitation, that I believe in a mileage basis. I do not believe the railroads of this country ought to be allowed to make things equal that God Almighty has made unequal. I do not believe they ought to be allowed to put a product from one place to another place as cheap as the people who produce that product within a hundred miles are able to put it there as against competitors for a thousand miles.

I want to add, and then I will not trespass further upon the Senator's time and the Senate's patience, that I believe every community in this land is entitled to the natural advantages of its position; and if it had not been for the advantage in freight rates which has been given to the North and East, the population of this country would have been better distributed, and its wealth would have gone with that distribution.

Mr. FORAKER. Mr. President, the Senator has now defined "just compensation" as I thought he would be compelled to define it if I understood the sense in which he had been employing the term: in other words, it is only another way of reaching a mileage basis on which to fix rates. Let me say that is the vice, for I believe it to be a vice, of all this government rate making that has been indulged in in this country and in every other country on the globe.

Mr. BAILEY. The Senator from Ohio will permit me to say that he connects two entirely independent answers. To say that a man is entitled to a just compensation for his service does not necessarily involve the further proposition that that service shall be measured on a mileage basis. In fact, I stated to the Senator in the very beginning of the statement, that the cost of loading and unloading was the same whether the shipment was for 4 miles or 4,000 miles. And there are other elements.

I do not pretend to say, and I would not be willing to see any law pretend to say what the elements are, because that is, as the courts said in the *Monongahela* case, largely a judicial question; but I simply express my own belief that it would be better to have a mileage basis, and thus give every place the natural advantages of its position. But even a mileage basis would not necessarily mean that the price for a given haul between two places of 10 miles should be exactly the same as the price for another given haul between two other places of 10 miles, because circumstances and conditions might make

one a just compensation, while another either more or less than that.

Mr. FORAKER. I should have qualified the remark I made by saying the Senator would have to come, if he followed the rule he has announced, to at least approximately a mileage basis. Of course in all these illustrations you eliminate the loading and unloading. It is the haul we are talking about.

Mr. GALLINGER. Mr. Prest—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from New Hampshire?

Mr. FORAKER. Certainly.

Mr. GALLINGER. I was about to suggest that if the principle of mileage rates is good for ordinary freight, it must be good for express matter as well. Perhaps the Senator from South Carolina and the Senator from Texas believe that we ought to compel our express companies to establish mileage rates. If it is good for that, why is it not good for the United States Government in conveying the mails? A package of second-class matter, for instance, is carried from Austin, Tex., to Boston for the same rate that it is carried from Lowell, Mass., to Boston. Now, is it a wrong that is being perpetrated upon the people? I simply suggest that if we are going to adopt this principle we ought to adopt it all along the line.

Mr. FORAKER. Let me give the Senator from Texas an illustration of each community having the benefit of its natural advantages that are given it by the Creator of the universe.

Only recently, within the last few months, I saw in a newspaper an account of the shipment of some steel rails from Pittsburg to Galveston. What was the character of that shipment? The rails were shipped first to New York and then they were shipped by rail back through Pittsburg to Galveston, and at a lower rate than could be obtained by shipping directly from Pittsburg, and enough lower to make it an inducement to go to New York to start the shipment. Why was it? Because Galveston had as to shipments made from New York an advantage the Almighty had given her that she did not have as to the shipment made from Pittsburg. When the rails were once in New York the shipper had an option to send them by ocean to Galveston or send them by rail to Galveston, and the water transportation, which the good Lord made provision for, was so much cheaper that the manufacturer at Pittsburg, not subject to that kind of competition, could more cheaply ship to New York and from there ship to Galveston.

Mr. TILLMAN. Will the Senator allow me to ask him a question?

Mr. FORAKER. Certainly.

Mr. TILLMAN. The Senator said that the good Lord had something to do with the Galveston rate from New York.

Mr. FORAKER. I will retract that if the Senator objects to it.

Mr. TILLMAN. Then did the devil have anything to do with the shipment there and back to Galveston?

Mr. FORAKER. I think the good Lord made the conditions out of which it grew.

Mr. TILLMAN. I am speaking about the devil having to do with the other thing.

Mr. FORAKER. There is no devil in it; there is nothing mysterious in it; there is nothing but sound business common



sense in it. Why is it that the shipper in New York can ship all the way across the continent to San Francisco at a dollar a hundred and will be charged for a shipment to Denver or Salt Lake, only half the distance, twice that much. It is because the shipper at New York can ship by water, and the railroad, if it wants the business at all, must meet water competition—that is, all the traffic will bear, if it is to go by rail.

Mr. TILLMAN. Will the Senator allow me to ask him a question?

Mr. FORAKER. Certainly.

Mr. TILLMAN. I have understood, and I think I have seen it stated, that the pottery manufacturers in England have got such a low rate across the Atlantic and by rail to Chicago that they not only ship across the ocean, but they also ship right through East Liverpool, or some other pottery-manufacturing center in his own State, and they get lower rates from Liverpool right through this place to Chicago than the East Liverpool pottery manufacturers get from East Liverpool to Chicago. I say that is infamous. Now, I will fight on that until I get it straight, if I live long enough.

Mr. FORAKER. Mr. President, I have two remarks to make about that. In the first place, the shipper of pottery from England or Germany to points in the United States has the election between half a dozen different ship lines and half a dozen railroads after he gets into this country, and it is their competition, one with another, that he gets the benefit of, whereas as to East Liverpool—and there is no place in the world that I have more interest in than I have in East Liverpool, and no interest and no industry that I take more pride in than I do the pottery industry at East Liverpool—they have only one road, perhaps—I do not know what the given case may be—but it is competition that does it. It is not the rate maker. The man who fixes the rate for the carrier does not want to make a rate lower than is reasonable, but he wants to make it low enough to get the business. They make the very lowest rate they can afford.

The second thing I want to say is that I tried to get another amendment in this bill in the Interstate Commerce Committee that would at least have partially covered that very thing, but I could not get the support of the Senator from Iowa [Mr. DOLLIVER]. I suppose he did not think it was efficient, but I thought it was.

Mr. DOLLIVER. I understand the Senator from Ohio to regret that he did not have my support for an amendment he offered in committee.

Mr. FORAKER. I did not know the Senator from Iowa was in the Chamber, but I will say that I do not think I had his active support on that. I intended to refer to the Senator from South Carolina.

Mr. DOLLIVER. Mr. President, I do not remember that the proposition of the Senator from Ohio ever came to a decision in the committee. My only opinion formed and expressed upon it was that in undertaking to settle the problem of the American merchant marine he was overburdening a somewhat heavy subject by the addition of a matter that would create more controversy than railroad rate legislation.

Mr. TILLMAN. Mr. President—



Mr. FORAKER. I hope the two Senators will allow me to state what I was about to state.

Mr. TILLMAN. Will the Senator allow me to comment on that last statement before he goes to a second one?

Mr. FORAKER. Certainly; I will do anything to oblige the Senator from South Carolina.

Mr. TILLMAN. I want to ask the Senator if he did not think it was wrong that the manufacturers of pottery in East Liverpool, who are endeavoring to compete with England, should have their necks broken or their profits destroyed, and the protective tariff—which he and his colleagues have been so industriously manufacturing or creating for, lo, these many years, to protect American industries—I want to know if it is right for the railroads to annul the protective tariff in the interest of American industry in order that the railroads may discriminate between Americans?

Mr. FORAKER. Mr. President, there is a good deal that I assent to in what the Senator has said, and a good deal that I do not assent to. The protective tariff was not responsible at all for the rates that were given in the cases mentioned by the Senator.

Mr. TILLMAN. But it is responsible for the growing up of the pottery industry at East Liverpool.

Mr. FORAKER. Yes; the protective tariff is responsible for that.

Mr. TILLMAN. Do you want to break up the protective tariff and destroy its benefits to the American manufacturers there, drive them out of business, and have their industry destroyed by the unjust discriminations against them by these railroads?

Mr. FORAKER. Well, Mr. President, if the Senator would go to East Liverpool, he would not see anybody being driven out of business.

Mr. TILLMAN. Well, they have been squealing because their profits are less. That they are squealing is very certain.

Mr. FORAKER. If the Senator had been in East Liverpool during the last Cleveland Administration he would have seen people out of business—thousands of them.

Mr. GALLINGER. And heard them "squealing," too.

Mr. FORAKER. Yes; and the Senator would have heard them squealing, too—squealing loud and long. But now nobody is out of business there. I think, however, the producers of pottery at East Liverpool are subjected to a disadvantage that I would be glad to relieve them from. When we were proposing to legislate about interstate commerce, having the same power to legislate about foreign commerce that we have to legislate about interstate commerce, it was my idea that we might save for American ships all this freight brought into this country and transported into the interior by reason of this competition at lower rates than are charged on shipments from ports of entry to some of the interior points, and that those lower through rates should not be allowed unless those goods were carried in ships of American registry.

I do not think I was loading anything on here that was not proper. I do not think I was loading anything on here that we should not put on here. It is a simple proposition. The testimony shows, the statistics show, that many million dollars' worth of property is brought into this country through ports of entry and shipped to interior points on rates that are

less than the rates are on the same goods from New York or Boston, or whichever port they may be imported into, to some interior point; and to that extent there is an overcoming of the protective tariff. I would be glad to give the American merchant marine an unqualified right to carry those millions of value, for it reaches to millions in the aggregate. The only thing, Mr. President, that cripples the American merchant marine is the want of business. If we could get freights for American ships, we would have again as grand and splendid a merchant marine as we had in the early days of the Republic; and here we have a chance——

Mr. TILLMAN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from South Carolina?

Mr. FORAKER. In a moment.

Here we have a chance to give to American ships some freight, to give them some business, and thereby cut off this competition that reduces these through rates. If we could give them only that which comes through the ports with these lower through rates, as we could by just adopting the ten or twenty lines that I presented to the committee, we would give our ships enough business to put them on their feet again.

I now yield to the Senator from South Carolina.

Mr. TILLMAN. I want to ask the Senator if it is not a self-evident proposition that the local traffic is made to bear the burden of these transcontinental and transatlantic shipments, and that the local industries, the consumers, and everybody else concerned are taxed to support it; and whether or not that would not be remedied by putting into this bill such legislation in regard to the long and short haul as would prohibit and prevent any carrier from hauling any goods from the terminals right by the doors of somebody else in the middle of the line, and charging less for that than they charge this man in the middle for hauling either way?

Mr. FORAKER. Mr. President, I can not answer the Senator in a word, but I can conclusively answer him, I think, in a very few sentences. All the carrier can charge to carry freight from New York to San Francisco is a dollar. It is that exact figure, I believe, on first-class freight. Why? Because if the railroads charge any more the traffic will be sent by water, as the water rate is so much cheaper, and the railroad traffic must take it at a dollar or else not take it at all. Inasmuch as the railroad is in operation, has its cars, has its crews, has its entire equipment, is in business, and is going there anyway, it had better take the freight at a dollar, which may be enough to pay expenses and keep its men employed and possibly yield a very slight profit. It must take it at an unreasonably low figure or else not take the business at all; and, taking it at that, and getting employment enough to pay the men whom they must keep anyhow, and make, possibly, some slight profit, just that much is contributed to the whole sum to be earned that would not otherwise have been contributed, and to that extent the people at intermediate points are relieved.

That all goes toward lowering the rates to intermediate points. The question is not whether the rate to San Francisco is too low—for no rate is too low—but whether the rates to intermediate points are too high; but if it be only a reasonable

and just rate under all the circumstances, then the railroad ought to be allowed to charge it.

Mr. TILLMAN. But does not the Senator see that all this intermediate traffic is compelled to bear the burden for the benefit of the extremities?

Mr. FORAKER. Why, Mr. President, there is no burden, unless the haul to the farther point is at a loss. We assume all the while that they are not hauling at any loss. It is better to haul at a slight profit or even for operating expenses than not to haul at all.

Mr. TILLMAN. Why does the Senator want the people and the industries in the interior to bear the burden of this great transcontinental haul? Why not make the fellow quit hauling if he can not haul at a profit?

Mr. FORAKER. Somebody must bear the burden; and those people who are at the terminal points, where they have the advantage of water transportation, get a low rate, and those who are at intermediate points and who can not have that advantage are subject simply to the disadvantages which the Almighty in creating this world imposed.

Mr. TILLMAN. But the Senator was arguing against Galveston and localities on the Atlantic and on the Gulf getting the benefit the Almighty gave them, saying that the railroads were justified in shipping from Pittsburg to New York and then to Galveston—

Mr. FORAKER. I was not inveighing against Galveston getting the benefit of her natural conditions. I was speaking in favor of it. I was calling attention to the fact that she has natural advantages, and that she was getting the benefit of them. Now, let me give another illustration.

Mr. TILLMAN. Wait a minute. I want to call the Senator's attention as to the justice of making the people in the interior pay for this luxury of shipping to New York and then back to Pittsburg.

Mr. FORAKER. I deny, except in some case where there is an abuse in fixing the rate, that there is any such burden unjustly imposed. The question, as I have already remarked, is whether or not the people at the intermediate points are required to pay unjust or unreasonable rates. If it be only a fair rate—and I think it is generally conceded that most of the rates that are complained of are in and of themselves just and reasonable, and unjust and unreasonable—only in relation to the longer haul—if it be of that character, then nothing is imposed upon them, unless the long haul is at a loss to the carrier, and it ought never to haul at a loss, and I do not suppose it does.

Mr. ALDRICH. Mr. President, I sought to interrupt the Senator some time since to express dissent from what I understood to be his position in regard to the significance to him of the words "just and reasonable compensation," or "just compensation for services rendered." It seems to me very clear that the Commission, in determining whether a rate is just and reasonable or affords just compensation—I understood that to be the contention of the Senator from Texas [Mr. BAILEY]—must take into consideration all the circumstances and conditions of each case, all the elements which go to making up the rates by the railroad companies themselves. The conditions, the distance, and every other condition and circumstance must be taken into consideration.

Mr. BACON. Will the Senator permit me to ask him a question?

Mr. ALDRICH. When I have finished the sentence.

A just and reasonable rate, or a rate which affords just compensation for the services rendered, under this bill does not necessarily mean a rate controlled, or largely controlled, by distance alone, but that competition and every other condition and circumstance must be considered in connection with it. A rate of four-tenths of a cent per ton per mile might be a just and reasonable rate under one set of circumstances and conditions, while 2 cents per ton per mile would be a just and reasonable rate under other conditions. Otherwise the enactment of this legislation would be intolerable for nine-tenths of the people of this country.

Mr. TILLMAN. I want to ask the Senator a question.

Mr. ALDRICH. I want to state what seems to me to be the construction which must be put upon this bill.

Mr. FORAKER. I was seeking to get a construction of the language from the Senator who suggested it—the Senator from Texas [Mr. BAILEY].

Mr. ALDRICH. I understand the Senator from Texas to assent to that proposition.

Mr. FORAKER. If the Senator had said "just compensation under all the circumstances" it would have been very different.

Mr. ALDRICH. It seems to me it could not mean anything else.

Mr. FORAKER. But those words are not employed.

Mr. BAILEY. Will the Senator from Ohio permit me to ask him a question?

Mr. FORAKER. Certainly.

Mr. BAILEY. Can the Senator find a constitution in this Union which says that when private property is taken for public use just compensation under all the circumstances shall be paid?

Mr. FORAKER. No constitution says that, of course.

Mr. BAILEY. Then why should such language have been incorporated in this bill?

I say to the Senator again, as I have said until it is a little tiresome to repeat it, that I am trying to apply to the railroads, when we come to employ their services, precisely the same test that they apply to us when they come to take our property. When a railroad reaches the Senator's property and seeks to condemn it for the purpose of constructing its line, whether under the law of Ohio or under the law of Congress, it must pay him a just compensation. That is the very language of the constitution of the Senator's State, and that is the language of the Constitution of the Republic. I simply say that when the Senator from Ohio, whether under the law of his State or under the law of the General Government, seeks to condemn the services of the railroad he ought to apply to it exactly the same standard that it has applied to him.

Mr. FORAKER. Mr. President, I quite agree with the Senator as to what is found in the Constitution of the Federal Government and of Ohio; and I quite agree that when it comes to taking my property for a public use it is a judicial proceeding in which it is sought to arrive at the true value of it and to take it at its true value. That is where the trouble to me comes in the employment of this term. They do not hear anything ex-



cept only what is the property worth, though, of course, they consider all its surroundings in arriving at that. When the Senator says to a railroad, "I have a carload of silk, and I want you to haul it for me from New York to Chicago;" and the railroad says, "Very well; I will take it at a just compensation," what is the measure of the just compensation? It is the service rendered. It is not that the carload of silk is worth twice as much to the Senator after he gets it to Chicago as it is before he ships it out of New York. That can not be taken into consideration any more than could the question that my property would be worth more to him after he would condemn it and pay me for it than it was while I owned it.

Mr. BAILEY. Mr. President—

Mr. FORAKER. I hope the Senator will bear with me just a moment. What would it be worth, therefore? The Senator talks about just compensation for the service rendered. What is it worth to haul it? What some other road will haul it for, or how much capital is invested, or how many men will have to be employed, or how much motive power will be required? All those things enter into consideration if you arrive at what is a just compensation for the service rendered.

Mr. BAILEY. Mr. President—

Mr. FORAKER. In a moment the Senator can answer. When the Senator gets to Chicago he wants to haul something back—or I do, for I am the carrier, I believe, and he is the shipper—I want to haul something back, but I can not get anything but pumpkins, possibly, or corn. I fill the car with them because somebody offers them, and we come to fixing a rate. What should the rate be? The service is precisely the same. It requires exactly the same length of time to make the haul, exactly the same number of men to constitute the crew, and the same motive power. It is the same service all the way through. What is the rule? That is what I want to get at. I am not trying to have a controversy with the Senator. I am trying to get some explanation of what is meant by a just compensation for services rendered that I can apply. I know what it means when you take a right of way through a man's farm. We all know that.

Then I want the Senator to answer another question. If this is to be—

Mr. BAILEY. I hope the Senator will allow me to answer the question he has already put before he asks me another.

Mr. FORAKER. If he likens this procedure to taking a man's private property, such as a right of way through his farm, for the public use, and that is a judicial proceeding, what is this? If it is the same, is it not a judicial proceeding, too?

I noticed the language of the Senator a moment ago. He said that in the *Monongahela* case the Supreme Court of the United States held that the taking of private property for public use, as was done in that case, was practically—I believe that was the word he employed—a judicial proceeding, or virtually a judicial proceeding. The court held that it was actually a judicial proceeding—a judicial proceeding pure and simple.

Mr. BAILEY. No; they did not. They never held that in any court in the history of the world. They held the ascertainment of what just compensation was to be a judicial question; but the right to take it is not judicial.



Mr. FORAKER. That is what I am talking about—the fixing of the price. The court held there, in so many words, that the fixing of a price was a judicial proceeding; that Congress had no right to fix the price, and Congress had no right to eliminate any element of value. Congress had undertaken to eliminate the value of the franchise, and said it should not be considered.

Mr. BAILEY. Now will the Senator allow me to answer?

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. BAILEY. It is somewhat surprising that a Senator with as wide an experience as the Senator from Ohio should suggest an argument on this subject that ignores the right of classification. Surely the Senator from Ohio does not suppose that any advocate of this bill would destroy the practice of classifying freight. The Senator overlooks the fact that if the railroad in carrying a carload of silk from New York to Chicago, should suffer an accident by which that carload of silk might be destroyed, it would be compelled to respond in damages fifty times as great as if it lost a carload of pumpkins. That is another consideration that makes it entirely proper that the railroad should charge more to carry the valuable cargo that increases its liability than the less valuable cargo, where, in case of accident, the loss would be merely a nominal one.

But, Mr. President, I want to ask the Senator this question: Does he deny that the same perplexing difficulties exist under a law which requires you to fix "a just and reasonable rate" that exist under a law that requires you to fix "a just compensation?" I confess that the practical difficulty is not a small one, though I think it not an insurmountable one; but every argument against employing the expression "a just compensation" can be made with equal force and effect against fixing "a just and reasonable rate."

Now, I want to ask the Senator a question, and upon the answer to that this whole matter can conclude. Does the Senator think that the fifth amendment to the Constitution limits the power of Congress to regulate these charges?

Mr. FORAKER. I do not think we would have any right to violate any provision of the Constitution.

Mr. BAILEY. Then, of course, Congress must regulate commerce under all the limitations of the Constitution. The Senator has argued that we can not regulate it in a way to deprive the carrier of its property without due process of law. The Senator agrees to that, and so do I. The Senator, then, must agree that no more can we so regulate it as to deprive the carrier of its property without just compensation. Therefore if we legislate under the limitations of the fifth amendment—and I think it is generally agreed that we do—then, sir, unless "a just and reasonable rate" is the rate that affords a just compensation, your law is unconstitutional and void.

So, it seems to me that, as we are legislating under the limitations of the fifth amendment, it would be a good practice to make the statute follow the Constitution. That was the only purpose I had. I want to say to the Senator from Ohio now, if the improper standard contained in the words "fairly remunerative," which, as I think, erect a false standard, be stricken out, I am perfectly willing to yield the words "a just

compensation" and adopt the words "a just and reasonable rate." They mean the same thing; and grown men ought not to wrangle as to whether the same thing will be expressed in one way or the other, when either way can be fairly understood by men of common intelligence.

Mr. FORAKER. I have said repeatedly that I have not been calling upon the Senator to accommodate me with the definition of this term with a view to having any wrangle about it. I have been trying to find out what was in his mind as to the meaning of it, explaining in that connection the difficulty I have had in applying it. Now, I understand what the Senator means, and that brings me to the point I want to make in this case.

I understand him to mean that it shall be just compensation in view of the character of the commodity hauled and in view of all the circumstances; in other words, "just compensation" would mean the same thing as "just and reasonable," I presume. I thought, perhaps, that was what was in the mind of the Senator. I thought, on the other hand, it might be in the mind of the Senator that the charge should be just the same for the haul whether it was one kind of a commodity or another, and that the charge should be more in proportion for a long haul, omitting, of course, the expense of loading and unloading, than for a short haul.

Mr. BAILEY. Will the Senator permit me to ask him a question there?

Mr. FORAKER. I will.

Mr. BAILEY. Does he think that the freight payment which would be just compensation for a carload, to use his own expression, of pumpkins from Chicago to New York would be a just compensation for a carload of silk from New York to Chicago?

Mr. FORAKER. No, sir; that is the very point I was proposing to make with respect to what the Senator said, and that is the very point that all rate makers in this country under the system now in vogue have always made with respect to the making of rates. They take into consideration when they have a carload of silk, that it is more valuable than a carload of something else, and that, if there should be a loss, there would be a greater liability.

But that brings me to the point of this whole thing. I knew the Senator would probably have to go to the mileage basis or the other plan, and when it comes to a mileage basis it would be ruin, in my judgment, to the business of this country. I do not believe 5 per cent of the shippers of the country would want us to pass this bill if they thought it meant a mileage basis.

Now, however, we have this explanation, whether it be "just compensation" or "just and reasonable" the Commission is to determine the rate. There is no standard by which it is to be determined. What is the standard to be? If the Commission is to say when it is silk, not pumpkins, not corn, not wheat, not rye, not oats, not barley, not potatoes, we have got to fix a different rate, a rate that will be in some proportion to the value of the commodity hauled and to the value added for the shipper by reason of the haul, just as they do now. What is that but discretion?

Who is going to fix that standard? That is a matter of judgment. The Senator very forcibly put that to the Senate when in his speech of a few days ago he said that was something

a court was not qualified to determine; that we wanted trained men for it, men who by long service as Interstate Commerce Commissioners would come to know how to make rates better than any court could know. Why would not the court do as well? Because, Mr. President, as the Senator said, we are not establishing any standard to which the ordinary mind can conform without the exercise of judgment. There is no taking of a pencil in hand to make a mathematical calculation. It is a matter of judgment. I charge so much for hauling potatoes from A to B. Now I am asked to haul silk. How much more shall I charge? What is that but a matter of judgment? What is that but a matter of opinion? What is that but a matter of discretion; and what is the judgment or opinion or discretion involved except only legislative discretion?

That brings me to refer again to the decision in the Michigan tax case. There has been a good deal of talk about that decision; and I want to do my duty as a Senator by putting my views of this decision before the Senate. Pass this bill as it is to-day and it will perish absolutely in the first court in which it comes under review, because, if it be established, as I will concede it may be, for the sake of the argument here and now, that the power of Congress is broad enough for Congress to fix rates, and that Congress can confer this power in an administrative way on a commission, the way in which we do it must avoid this exercise of judgment and discretion or we delegate legislative power, and the law is not worth the paper on which it is written in consequence of that.

This was a case where a law had been passed in the State of Michigan to assess for purposes of taxation the value of the railroads in that State. Prior to 1902 the railroads had been taxed in that State, as I understand from the decision, a percentage of their gross earnings. In 1902 a law was passed creating a State board of assessors for the valuation of railroad property for purposes of taxation. That law prescribed that the board of assessors should fix as the value of the railroad property the average rate for taxation of the property throughout the State. In that way they found the rate, found the value, found everything that was necessary to the taxation of railroads under that law.

The contention of the railroads was, among others, that the law delegated legislative power. But the Supreme Court upheld the law as against the contention that it delegated legislative power because, as the Supreme Court said, it left nothing for the board of assessors to do except only to make a mathematical calculation, and therefore there was no delegation of legislative discretion or judgment. A standard was given, just as a standard was given in the granger law of Iowa, or the law in Wisconsin, or in other of the statutes to which I have referred. This board of assessors sat down not to say how much, in their opinion, this road shall be taxed, or that road, but to ascertain from the official figures laid before them what the average was, and that was the rate.

Mr. DOLLIVER. If it will not trouble the Senator, I would like to inquire what the standard was; whether it was not a standard determinable only by the exercise of judgment and discretion of the innumerable taxing boards scattered all over Michigan?

Mr. FORAKER. No, Mr. President. The Supreme Court say that the innumerable taxing boards scattered all over Michigan—some thirteen hundred of them altogether—did their work without regard to this law. It was the form in which property was valued for taxation, and they taxed one value in one county and a different value in another, but the court said this State law has nothing whatever to do with that. This State law takes the result of all these innumerable boards. It figures out what the average is, and that it is commanded to apply to the railroads—a purely administrative duty.

Now, let me read what the court said :

Whatever, in view of the distinct grant in the Federal Constitution to the President, Congress, and the judiciary of separately the executive, legislative, and judicial powers of the nation, may be the power of Congress in the delegation of legislative functions, a very different question is presented when the restrictions of the Federal Constitution are invoked to restrain like action in a State.

I pass over a paragraph that does not bear directly on this, and will read :

But it is unnecessary to enter into a discussion of this question, for in the case at bar there is no abandonment by the legislature of its functions in respect to taxation. The statute prescribes as the rate of taxation upon railroad property the average rate of taxation on all other property subject to ad valorem taxes. It provides the most direct way for ascertaining such average rate, deducting it from a consideration of all the other rates. No authority is given to the local assessors to apply their judgment to the question of the railroad rate.

I call attention to that sentence as answering completely the Senator from Iowa.

Their authority in respect to the matter of taxation is precisely the same as it was before and independently of this statute. Their duty is to act according to their judgment in respect to local taxes committed to their charge. When they have finished their action, taken, as it must be assumed to have been, in conscientious discharge of the duties assigned, from it—

Now, note this language—

from it by a simple mathematical calculation the average rate of taxation is determined. If the legislature should be convened after they have finished their action and then prescribe the average rate thus mathematically deduced as the rate of railroad taxation, no question could be made of its validity. It would be obviously a legislative determination of the rate of taxation. Is it any the less a legislative determination that it assumes that the various local officials will discharge their duties honestly and fairly, with reference to local necessities and independently of the effect upon the railroad rate, and directs that the mathematical computation be made by a board of ministerial officers, and thus made shall become the railroad rate of taxation? Why is it necessary that the legislature be convened to add its formal approval of the integrity of the action of the local officers? May it not intrust the mathematical computation to the State board of assessors; and if so, may it not likewise act upon the assumption that the local assessors will discharge their duties with an eye single to those duties and irrespective of the effect upon the railroad rate?

I have read all I care to, for I have read enough to show that that act was sustained in the language of the Supreme Court, because it conferred upon the board of assessors of the State of Michigan no legislative discretion, no judgment; no right to be exercised of discretion or judgment. It gave to them a duty purely administrative in character, because it involved nothing more than making a mathematical calculation deduced from figures as to its result, that were placed before them in an official form under the statute of the State.

Mr. BACON. I am glad the Senator from Ohio has returned to that feature of his argument. I desired to ask him a question upon it when he was speaking on it before, but he passed



from that branch, and I therefore desisted. I recall, of course, as we all do, the very interesting speech made by the Senator upon a former occasion, when he discussed this question and read a number of authorities, among others, the Iowa case, and the question I desire to ask the Senator is this, as he reverts to that discussion: Does the Senator now present this argument with the same purpose that he had when he made the former speech—to demonstrate the fact that it is practically beyond the power of Congress to enact a rate law which shall be free from the constitutional objections to which he now calls our attention?

Mr. FORAKER. No.

Mr. BACON. Or has the discussion which has intervened brought the Senator to the conclusion simply that this particular bill would be unconstitutional and that there is possibly a delegation of power which would not be open to constitutional objections in the particular which he has mentioned? In other words—

Mr. FORAKER. I understand the Senator.

Mr. BACON. I hope the Senator will pardon me, as I have not trespassed upon him at any great length. In other words, does the Senator still adhere to his original proposition that this constitutional objection is one which must necessarily be fatal to this class of legislation? Is the Senator, in the criticism which he makes of this particular bill, prepared to say whether, in his judgment, outside of a flat mileage-rate basis which he has discussed, there is any form of delegation that can be devised which would be free from the objection he now suggests to the extent that in the delegation the Congress would exhaust its legitimate function in the exercise of all which involves discretion and judgment and limit the Commission to that which is simply administrative in its character?

Mr. FORAKER. The Senator asks me if I still adhere as though he saw evidences of some kind of a departure from something I have advocated heretofore.

Mr. BACON. The Senator misunderstood that.

Mr. FORAKER. All right. Like another gentleman of whom we hear frequently, I have not changed my mind.

Mr. BACON. The Senator misunderstood the question which I propounded. I did not intend to convey any such intimation.

Mr. FORAKER. I said, speaking last December, that conceding that Congress had the power to make rates, it could delegate that power to a commission, but it could delegate it only in an administrative way. That is what I am contending for now. I gave some illustrations of what I meant by that. It could say, in delegating that power, that the Commission should fix rates according to the mileage basis. That would be an administrative duty. They could do it by classifying the roads as Iowa and Wisconsin did. That would be administrative. I have not found any way by which we can delegate that power and make it administrative except only one or the other of those two ways, and I am opposed to both of them because I think they are both ruinous and impracticable, unless we are going to revolutionize our way of doing railroad business.

Mr. President, what I am contending for is precisely what I contended for when I first spoke here in December, when I spoke again later in December, and every time I have addressed the Senate on the subject, and I refer to it now only



because this decision, having been rendered only a few days ago, gives me another authority to support the proposition I have been contending for all the while.

I want to say to the Senator that if you want a law that will stand the test of the courts and that will remedy the evils, we must overcome the difficulty presented by this and other like decisions.

Mr. BACON. The Senator will pardon me for a moment. I want to say to him that the purpose I had in making the inquiry of him was twofold. I desired to know whether the Senator was still of the opinion that it is impracticable for us to frame a law which would be operative and which would not be open to constitutional objection; and, in the second place, if the Senator, who has given very great attention to this matter, and who has offered a number of amendments, or several, could assist those of us who desire to frame a law by suggesting phraseology which will make the proposed law operative, in his opinion, and free from the constitutional objections to which he has referred.

Mr. FORAKER. I have already said to the Senator, as I have said heretofore in the Senate, that I do not know of any way except two ways, which I have indicated for the purpose of illustration, to fix a definite standard that will result in the Commission having only an administrative duty to perform. It is because I do not know of any way except one or the other of those two, and both, in my judgment, are ruinous, that I want to find another way that will save us from this dangerous experiment of governmental rate making that I have undertaken to provide in this bill—

Mr. ALDRICH. There is another way, but I imagine it is hardly practicable in this country, and that is to adopt the English system, and have a commission recommend a definite schedule of rates.

Mr. FORAKER. Oh, certainly, or do as is done in some of our States, where the commission makes *prima facie* rates, and they may go into court. But that would not meet the demand upon us. I am talking about a bill that gives the Commission power to substitute a rate and put it in operation. I know of no way except according to the standard "just and reasonable," and that I contend is an indefinite standard, which will not answer the requirements of the Constitution.

Mr. NEWLANDS. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Nevada?

Mr. FORAKER. Certainly.

Mr. NEWLANDS. I should like to ask the Senator from Ohio whether he thinks it would provide a sufficient standard for the Commission if we should provide in the bill that the Commission should first have made a valuation of the roads, and that the rates should be so adjusted as to yield a fixed return of a certain percentage upon that valuation?

Mr. FORAKER. I think it would. I think the Senator from Nevada has suggested a way that might be definite enough as establishing a standard.

Mr. DOLLIVER. If it will not trouble the Senator from Ohio, who has suggested three ways in which it can be done, I should like to read three lines from a decision of Judge

Brewer, who was the author of the decision in the Michigan case to which the Senator has referred. I read from the case of the Chicago and Northwestern Railway Company *v.* Dey, reported in 35 Federal Reporter.

Mr. FORAKER. What State?

Mr. DOLLIVER (reading)—

The vital question with both shipper and carrier is that the rates shall be just and reasonable, and not by what body they shall be put in force. Third. While, in a general sense, following the language of the Supreme Court, it must be conceded that the power to fix rates is legislative, yet the line of demarkation between legislative and administrative functions is not always easily discerned. The one runs into the other. The law books are full of statutes unquestionably valid, in which the legislature has been content to simply establish rules and principles, leaving execution and details to other officers. Here it has declared that rates shall be reasonable and just and committed what is, partially at least, the mere administration of that law to the railroad commissioners.

He then adds:

While, of course, the cases are not exactly parallel—

Referring to the fixing of rates by the standard referred to by the Senator from Nevada—

yet the illustration suggests how closely administrative functions press upon legislative power and enforces the conviction that that which partakes so largely of mere administration should not hastily be declared an unconstitutional delegation of legislative power.

Mr. FORAKER. In the first place, I would rather have the decision of Mr. Justice Brewer delivered from the bench of the Supreme Court of the United States last Monday a week than the decision of Mr. Justice Brewer delivered on the circuit when he was a circuit judge. There has been a good deal of progress made in the investigation of this subject, and it may be that the language employed by Mr. Justice Brewer read by the Senator from Iowa, was not directed to the decision of the question which we are now considering. I do not understand that it is. I do not know under the statute of what State the case arose. Will the Senator tell me?

Mr. DOLLIVER. It arose in the Iowa district. It is the case of the Chicago and Northwestern Railway *v.* Dey, decided January 27, 1888. I refer to it simply because it is in line with other decisions and was rendered by Mr. Justice Brewer then sitting in the circuit court, although he was, I think, on the Supreme bench.

Mr. FORAKER. Does the Senator find anything in that case which indicates that Mr. Justice Brewer was passing on the question whether the duty conferred on the Commission was administrative or legislative? Yes; he will say he does. How did Mr. Justice Brewer dispose of it? As the Senator has read to us, by saying that it is difficult to tell sometimes an administrative duty from a legislative duty. That is true. But Mr. Justice Brewer later, after going on the bench of the Supreme Court, in the Maximum Rate case (reported in 167 U. S.), said that the making of a rate was legislative and not administrative. So by that time he had reached a point where he was able to say without any qualification that making what was under the statute to be a just and reasonable rate was a legislative act.

Mr. RAYNER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Maryland?

Mr. FORAKER. Certainly.

Mr. RAYNER. I should like to know from the Senator from Ohio whether Justice Brewer did not change his opinion in that case and whether every word in the original opinion that he delivered referring to the necessity of Congress laying down a rule was not eliminated from the opinion from which the Senator has read?

Mr. FORAKER. No.

Mr. RAYNER. I read the proof sheets of the original opinion and I have read the opinion the Senator has read from, and every word that Justice Brewer said with reference to Congress laying down a rule by which the Commission should be governed is eliminated in the modified opinion. But it did appear in the proof sheets of the original opinion, as I read them in the Supreme Court. I should like to know from the Senator from Ohio whether or not that is a correct statement.

Mr. FORAKER. There got into the newspapers—I do not know how—the original draft of the opinion of Mr. Justice Brewer in the Michigan Tax cases, as prepared by him, and as it was printed at his request before it had been submitted to his colleagues for their concurrence. When they concurred, for some reason they did strike out from that opinion some things that were in it as originally prepared by Mr. Justice Brewer, which was published in the papers, and which I have before me.

Mr. RAYNER. Did not the court strike out, in the modified opinion, the statement that Congress must lay down rules to govern the subordinate tribunal—in those very words? I looked at the proof sheets of the original opinion, and not a newspaper account of it. It shows that the court had undergone a change with reference to the proposition the Senator is arguing, that we must lay down a mathematical rule to govern the Commission.

Mr. FORAKER. I did not care to read, and for reasons the Senator will appreciate I do not care to discuss, what appeared in the newspapers and was not part of the opinion as delivered from the bench.

I do not know that the exact words the Senator from Maryland employs were in this original draft, and therefore I can not say just what was stricken out. I only know that as it originally stood it seemed to me to be an absolute foreclosure of this whole question. But I contend that with those words stricken out the effect of the decision is just what I have been contending for. The court upheld the law and said it is free from the charge of delegating legislative power, because they say the board under that law had to perform only an administrative duty—making a mathematical calculation. That is all I claim for the opinion.

Mr. McCUMBER. May I ask the Senator a question right here on that point? How does he harmonize this view with the tea case, decided about a year ago, where the only standard was that we should exclude any teas of an inferior grade? The question of inferiority, it seems to me, must have involved judgment. It is a question which would require investigation and a conclusion based upon the judgment formed from that investigation. I confess for myself I have not been able to harmonize that case with some of these other decisions.

Mr. FORAKER. The distinction I would make as to that case—and I can realize how the Senator has some embarrassment on account of it, for it gave me some when I first read it—

is that it does practically establish a definite standard, for it commands the Secretary of the Treasury and the board of experts to employ the recognized standards by which to determine what is an inferior quality for cup tea, and that is treated as though it is something well understood, and in conforming to that there was practically no exercise of discretion.

The statute goes further and it provides that the tea must be boiled thus and so—immersed in boiling water; I have forgotten what the expression is. I have not looked at that case for some months. But I think if the Senator studies it he will find that that is what perhaps was in the mind of the court, and no doubt enabled the court to differentiate that case from the other. Whatever may be the tea case, here is an opinion handed down a week ago last Monday; it is the very latest utterance from the Supreme Court; and it does say what I have contended for. I do not want to discuss what is not in the case.

Mr. BAILEY. I assume, whatever may be the Senator's opinion upon the merits of the legislation, that he is anxious, if a bill passes, that it shall be constitutional. I am not one of those who insist that this question has ever been decided by the Supreme Court, and I recognize that it may be a very close question, too, as to the power of Congress to authorize the Commission to fix rates. I will venture, however, to express the opinion that the Supreme Court will sustain that power if granted in those direct terms.

But I desire to ask the Senator from Ohio if the matter can not be made more certain in this way: That we authorize the Commission to establish a rate, either a rate that is just and reasonable or a rate that affords a just compensation, as we may determine, and then provide that the rate so prescribed shall thereafter be the lawful rate? It would seem, then, if you go into the court to attack that rate, you are not really attacking the rate made by the Commission, but you are attacking the rate which Congress has declared to be the law of the land. Certainly, if the power can be lodged with the Commission in any way, that is the safest way in which to do it.

Mr. FORAKER. I perhaps would agree with the Senator from Texas, upon further thought, and I have no disposition to take exception to his suggestion now. It may be a way out of it to those who want this kind of a bill.

But now I get back to my amendment; and I have detained the Senate so much longer than I should have done that I hope I may be allowed to conclude. All this effort has been to show that this bill is, as the Senator from Texas has just said, a bill which, if it becomes a law, may be held by the court to be unconstitutional. I do not think there is any doubt about it. I have not any more doubt about the unconstitutionality of this bill, not only on that one ground, but other grounds which I have heretofore enumerated and detailed, than I have that I am here discussing it this afternoon—I have not a bit more doubt—and I do not see how anybody else could have any doubt about it.

But, now, Mr. President, whether or not I am right about it that it is unconstitutional, we are all of one mind, in agreement with the Senator from Texas, that these are serious questions, and if we can, in legislating on this subject, make this bill constitutional, we should do it, and I am going to labor in every way I can to help to do it. We should, however, in addition to



that—for I do not see how you are going to establish a standard that will relieve you from the question of the delegation of legislative power—as I have proposed, attach an amendment as an additional section that will broaden and strengthen the Elkins law, so that if this should fail we will have that remedy, a better remedy than the law as it is affords. There is nothing in this amendment that is in conflict with a word in the Hepburn bill. It is not in conflict with any provision of it. It simply provides that when a complaint is made before the Commission the Commission shall exercise its powers of conciliation, if they are sufficient, and if not, it shall send the complaint to the proper court having jurisdiction, there to be tried in a suit brought by the Government at the expense of the Government, without any expense whatever to the shipper, and the provision of this amendment is that the proceedings there shall be expedited.

It provides also a remedy as against excessive rates. The law as it now is commands just and reasonable rates; that is, the lawful rate, a just and reasonable rate. Much more will that be so when we pass this amendment, because it emphasizes that. If a shipper shall come and complain that a rate which has been put in operation is unjust and unreasonable because excessive, he can have his remedy before the Commission, under the Hepburn bill, after a full hearing to be reviewed in court, if we put a broad review amendment on it, or he can apply at once under this to the court for relief, and the court, in my opinion, has full power to enjoin what is in excess of the lawful rate.

Mr. MORGAN. I wish to ask the Senator from Ohio, before he takes his seat, if he considers that his amendment would be a sufficient justification for him to vote for the bill with all the other provisions in it?

Mr. FORAKER. I would not like to vote for the bill with the provisions in it that are in it, because I doubt their constitutionality. I do not like to vote for a measure that I think is unconstitutional. But with all my brother Senators differing from me on that point, I might, if I thought I was getting something that would bring real relief, be willing to forego a great deal.

Mr. MORGAN. After we had gotten the bill in shape to satisfy the Senator from Ohio, would he see any objection of a commercial, constitutional, or legal sort to a provision in the bill covering transportation over the rivers and water courses?

Mr. FORAKER. No; I contended for that in the committee, if the Senator please, and I contended for it in a speech here; that is to say, I contended for it in the sense that I pointed out that the bill does not extend to interstate commerce carried on upon the rivers. I live on the river at Cincinnati, and we have commercial relations with New Orleans. It is interstate commerce.

Mr. MORGAN. Why should it not extend to rivers as well as to railroads?

Mr. FORAKER. It should extend to the rivers as well as to the railroads, not on account of excessive rates, because the water rates are excessively low and nobody complains of them, but because they give rebates and because they discriminate both on the rivers and on the lakes.



Mr. MORGAN. Then why not extend the measure over the navigable waters of the United States?

Mr. FORAKER. I think we should extend it, as I say, over the lakes and over the rivers. I think this bill should apply to interstate commerce carried on all interstate carriers, no matter whether by rail or by water. That is my contention about it. I think the Senator from Alabama was right in his contention in that respect.

Mr. President, I wanted to cite some authorities, but it is late, and I will forego that if the Senate will allow me to reserve the right to do it at some later time. I mean some authorities to show that it is competent for Congress to confer on the Interstate Commerce Commission authority to bring suits either in its own name or in the name of the Government without expense to the shipper to enjoin excessive rates. I have a number of decisions to that effect, if anybody challenges it at any time.

Now, I want Senators to take this matter into consideration. I take it every man here wants to so legislate as to afford a remedy against the evils that have been complained of. Every man here knows that no remedy will be afforded if we pass an unconstitutional law. Every man here knows the law we have known as the "Elkins law" has been an efficient law in so far as it has been put to the test. Every man here knows that if we broaden the provisions of that law in the way I propose it will not conflict with this other legislation, and if other legislation about which we all must have apprehension as to its constitutionality should fail in the courts we will then have a better law, and then all this effort we are making will not have been in vain.

#### APPENDIX.

Amendment intended to be proposed by Mr. FORAKER to the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission, viz: Insert the following:

SEC. —. *That section 3 of the act approved February 19, 1903, entitled "An act to further regulate commerce with foreign nations and among the States," be, and the same is hereby, amended so as to read as follows:*

"SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is, either singly or in cooperation with one or more other carriers, publishing and charging unjust or unreasonable rates therefor, or is committing any discriminations forbidden by law, whether as between shippers, places, commodities, or otherwise, and whether effected by means of rates, rebates, classifications, preferentials, private cars, refrigerator cars, switching or terminal charges, elevator charges, failure to supply shippers equally with cars, or in any other manner whatsoever, it shall, if the complainants so request or if for any reason it prefer or deem advisable to proceed under the provisions of this section instead of under the other provisions of this act, be its duty, if such carrier or carriers will not, after due notice, desist from such violation of the law, to file with the Attorney-General a brief statement of its grounds for such belief and the evidence in support thereof, and thereupon, under his direction, and in the name of the United States, a petition shall be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in any one of such judicial districts or States, whereupon it shall be the duty of the court summarily to inquire into the facts and circumstances, upon such notice and in such manner as the court shall

direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary; and upon being satisfied of the truth of the allegations of said petition said court shall enjoin, according to the ground of complaint, the publishing and charging of all of any such rate or rates so complained of, in excess of what the court shall find to be reasonable and just, which shall continue to be the lawful rate as heretofore and now prescribed by statute; such injunction to continue in force during such period as the same or substantially the same conditions may continue, as are established by the evidence in such case; or shall enforce an observance of the published tariffs if they are found to be just and reasonable; or direct and require a discontinuance of such discriminations, by such proper orders, writs, and process as will, as nearly as may be, prohibit unlawful discriminations as to both persons and places and secure equality of right and treatment to all shippers and localities, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier or carriers complained of; and all proceedings hereunder shall be subject to the right of appeal to the Supreme Court as now provided by the act of February 11, 1903, to expedite the hearings of suits in equity; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon, unless the circuit or Supreme Court, on application therefor made for good cause, so order. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this act shall be prosecuted at the cost of the United States or the railroad company or companies as the court may adjudge equitable and just, and such proceedings shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said act approved February 4, 1887, entitled 'An act to regulate commerce' and the acts amendatory thereof. And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and any shipper or shippers who may be interested, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper or shippers, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence or information, documentary or otherwise, in such proceeding: *Provided*, That the provisions of an act entitled 'An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," "An act to regulate commerce," approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted, approved February 11, 1903,' shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission."

SEC. —. *That nothing in the act to regulate commerce, approved February 4, 1887, or in the act to protect trade and commerce against unlawful restraints and monopolies, approved July 2, 1890, or in any act amendatory of either of said acts, shall hereafter apply to the establishment of rates or the changing or publication of the same with respect to foreign commerce, or shall prohibit any necessary and reasonable agreement of two or more carriers with respect to rates or charges and the maintenance and observance of the same for interstate transportation that is not in unreasonable restraint of trade or commerce with foreign nations or among the several States.*

An act to further regulate commerce with foreign nations and among the States.

*Be it enacted, etc.*, That anything done or omitted to be done by a corporation common carrier, subject to the act to regulate commerce and the acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute

a misdemeanor under said acts or under this act shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said acts or by this act with reference to such persons except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said acts to file and publish the tariffs or rates and charges as required by said acts or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than \$1,000 nor more than \$20,000 for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier as is required by said act to regulate commerce and the acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$1,000 nor more than \$20,000. In all convictions occurring after the passage of this act for offenses under said acts to regulate commerce, whether committed before or after the passage of this act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier acting within the scope of his employment shall in every case be also deemed to be the act, omission, or failure of such carrier as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereto, or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act.

Sec. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Sec. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrim-

ination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said act approved February 4, 1887, entitled "An act to regulate commerce and the acts amendatory thereof." And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding: *Provided*, That the provisions of an act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted, approved February 11, 1903," shall apply to any case prosecuted under the direction of Attorney-General in the name of the Interstate Commerce Commission.

SEC. 4. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this act.

SEC. 5. That this act shall take effect from its passage.

Public, No. 103. Approved February 19, 1903, second session, Fifty-seventh Congress.

6715



(From *American Spectator*, Washington, D. C., May 5, 1906.)

## A Man of the Hour.

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Few men in public life have experienced more ups and downs in political favor than Joseph Benson Foraker, Senator from Ohio, who has recently held some prominence because of his position on railroad rate legislation. He is a man of almost boundless talent and of excellent education, a man to whom almost anything could have been possible, to whom nothing indeed has seemed impossible; yet a man who has thrown away many of his larger chances in the future for the sake of an immediate gain in the present. He has been mentioned and in comparatively recent years for the office of President of the United States. Indeed there is hope that he may reach the cherished seat in the campaign of 1908. It is the same sort of hope that stirs Mr. Fairbanks, and already these two are universally considered rivals, the one by the other.

And now Mr. Foraker is as near to the White House as he is apt to be and further away than he has been for some time. Although he has a prominent place in the public eye, he is really in one of the "down" periods of his interesting career. These extremes of altitude in public esteem have been the result not so much of Mr. Foraker's steady effort as the natural outcome of the fortunes of those to whom he has had the good luck or the bad judgment of being allied.

At one time Foraker claimed to be a Roosevelt man,—



more than that, "the original Roosevelt man." He was strong for recognition at the White House, as such. But he changed. For, while he was making every effort to spell himself the most loyal adherent the President ever had, he was endeavoring to slip the stiletto under the Presidential shoulder blade on the matter of rate legislation. It was all done so smoothly and adroitly that it looked for a time as if the blow would strike home, until a member of the Cabinet (also a man from Ohio) succeeded in turning the weapon so that Mr. Foraker felt the point of it, and the rest of the country saw the trick exposed. Taft was the "bully boy" who did it. Foraker and Taft come from the same locality. Cincinnati knows them both, and both of them know Cincinnati. It is sufficient here to say that the eclipse of the notorious boss George B. Cox redounded to the credit of the present Secretary of War and somewhat to the discomfiture of the Senior Senator from the Buckeye State. From all of this it may be surmised that Taft and Foraker, although Ohio Republicans, are not as close political friends as they might be. Well, they are not! Foraker has stood for the Ohio organization and he has been able to control a rather turbulent body; Taft, on the other hand, has not been able to see his way clear to acquiesce in all of the activities of Ohio Republicanism, even when his friends were whispering insistently, and even yelling right out loud that he was a presidential possibility,—nay more,—a probability; he disregarded the still small voices and the still bigger ones and played ducks and drakes with the Ohio Republican organization in 1905; but he was working for the good of the party and not for the benefit of any particular element of it.

Partly as a result of this, partly as a result of the general scattering of his henchmen and the ascendancy of the "young republican" idea, also as an evidence of the new cry to divorce national from local politics, and likewise from the stand that he has taken on the railway rate question, which is not the popular one at this time, Mr. Foraker is on one of his "downs;" which does not mean at all that he will

not have a subsequent triumphant "up." He is far more likely to have that than he is to remain in eclipse for any length of time; and were he not ambitious enough and able enough to seize an opportunity to rise again he would not be long in coming to the "man-without-a-country" position occupied by the New York senators.

But Foraker is nothing if not ambitious, and this quality has carried him far; sometimes it has been a "vaulting ambition which o'erleaps itself," but it manages to alight safe and ready for further flights. Added to this, Mr. Foraker must be given credit for great ability, for an indomitable spirit, for a very considerable legal knowledge, which he is able to use to wonderful advantage as in his plea of "unconstitutionality" in rate legislation, which has furnished a huge stumbling block for the advocates of regulation of railroad tariffs.

No further proof is needed of Senator Foraker's tenacity of purpose and his fighting spirit than is furnished in the dry record of his political life as given in the "Congressional Directory." He was Republican candidate for Governor of Ohio in 1883, but was defeated; was elected to that office in 1885, and re-elected in 1887; was defeated in 1889. But defeats never discouraged him, and he went steadily ahead perfecting his organization and representing it in state and national capacities, until he came to the United States Senate in 1897. He has been a strong man in that body, and in the succeeding years of his term, which expires in 1909, he may become stronger still; nor has he removed his gaze from the simple Colonial building at the other end of "the Avenue." But he has never gotten into the inside of things in the Upper Chamber, as his attainments would certainly entitle him; he has missed it because he has been handicapped by the gift which Ohio, more than any other state, bestows upon her sons—the fatal gift for politics.

—B. A.





# RAILROAD RATE BILL.

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MISCELLANEOUS REMARKS

BY

SENATOR FORAKER,

FIFTY-NINTH CONGRESS, FIRST SESSION,

1906.



WASHINGTON.

1906.





## Railroad Rate Bill.

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### MISCELLANEOUS REMARKS

BY

## SENATOR FORAKER.

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*January 17, 1906.*

Mr. FORAKER. What I wanted to say was that the question of what was a just and reasonable rate was not raised by the pleadings in any case referred to, but only the question whether or not the particular rate challenged was an unreasonable and unjust rate. That is the only question the court was called upon by the pleadings to decide.

Now, to illustrate the difference between those cases. Take the case suggested by the Senator from Oregon [Mr. FULTON] and commented on by the Senator from Texas [Mr. BAILEY]. Let us suppose that we have under consideration a shipment of some kind of freight from Marshalltown, Iowa—I believe that is the name of the place given—to Chicago.

Mr. FULTON. Yes; Marshalltown, Iowa.

Mr. FORAKER. And we will suppose that Congress has acted, that being interstate commerce, and has fixed a specific rate of \$5—that was the rate named, I believe, by the Senator from Oregon. That rate having been fixed by law, will anybody dispute that a shipper shipping over that road would have a right to appeal to a court of equity and say, "The rate fixed by statute is \$5, but the railroad is exacting \$6," and ask the court to enjoin the railroad from collecting the \$6 rate? Any shipper could do that to-day without any enabling statute on the subject. Why? Because all in excess of \$5 is unlawful, and it is a judicial function to enjoin and prohibit that which is unlawful. Does it alter the principle involved when the Congress, instead of saying the rate shall be \$5, says it shall be a reasonable and just rate?

The court in such a case, the rate being challenged, the pleader saying in his bill, that he exhibits, the law authorizes only \$5, because that is a reasonable and just rate, but the railroad is charging us \$6, which is an excessive and unlawful and unreasonable and unjust rate, does anybody imagine that the court would not have a right, in the exercise of its judicial function, to find out from testimony that \$5 was the reasonable and just rate and that \$6 was an excessive, unreasonable, and unjust rate? And having ascertained that, and the pleadings having been so framed as to call for a decision on the subject, can anybody question but that it would be the duty of the court to enjoin the excessive rate, or all in excess of \$5? The law to-day does prescribe that the rate from Marshalltown to Chicago shall be not \$5 a ton on any given kind of freight, but shall be only a reasonable and just rate, whatever that may be found to be

upon the testimony offered, and that anything that is unreasonable and unjust is unlawful.

Now, there is no plainer judicial function than to ascertain what is a reasonable and just rate. What is reasonable and just the courts are called upon to ascertain every day in the exercise of their judicial functions, and there is nothing plainer than that when they ascertain what is reasonable and just, whether applied to a railroad or to the exercise of police power, with respect to a tenement house, or whatnot, the court has full equity power to enjoin all that is excessive. The only propriety of any legislation on this subject is that there may be a special procedure that will authorize one proceeding in court on behalf of all the shippers who are alike affected. That is the ground of the legislation, it seems to me, that we want.

So the Senator from Oregon is entirely correct in his contention that it is a purely judicial function to ascertain what is a reasonable and just rate. Now, how far he will go in that I do not know, but it does not divest the court of its power that the order reaches into the future.

If the Senator will pardon me another moment, the order that the railroad shall not exact anything in excess of what the court finds to be just and reasonable projects itself into the future, for all such remedies project themselves into the future. Every injunction operates in the future and is intended to be such a remedy. Just the same kind of an order was made in the Nebraska case, if I am not mistaken in my recollection as to the case in which it occurred. The court would hold that this, naming it, is a just and reasonable rate and no more shall be exacted so long as the conditions established by the testimony in this case may continue, with leave to the parties to come and show that different conditions had arisen and that therefore there was reason for changing the rate.

Mr. President, I ought to apologize to the Senator from Oregon, and I promise him that I will not take any more of his time unless the subject becomes so interesting that I can not help it. I want at an early day to speak on this subject at length.

Mr. FULTON. I hope the Senator from Ohio will interrupt me frequently, because I wish the RECORD to show that I opened the discussion and closed it, and that somewhere between a good speech was delivered.

Mr. BAILEY. If the Senator from Oregon will permit me, I will duplicate the promise of the Senator from Ohio. I want to reply to the Senator from Ohio just this far and only far enough to say that I have not said, and I hope I have not given anybody good reason for supposing that I have said, that the court could not enjoin an unreasonable rate. They can enjoin the rate when fixed by the railroad itself, probably upon the application of a shipper alleging that the railroad charges a certain rate from Marshalltown, in the State of Iowa, to the city of Chicago and that that rate is excessive and unreasonable and unjust.

I think it is undoubtedly true that upon a condition of that kind, upon proof to support it, the court could enjoin the collection of that excessive freight charge. It is absolutely certain, and I take it no Senator would question it, that if the Congress should enact a rate so low as to be confiscatory, acting directly upon the subject, or if through the Commission a rate so low

as to deprive the carrier of its property without due process of law or without just compensation for its services, there is no question but that the court would have the power to enjoin that rate. But that is an injunction against an existing rate in a case made up upon allegation and answer, and no court upon a case of that kind has any warrant for making a decree that binds all the balance of the people not represented in that case.

Mr. FORAKER. I agree with the Senator to that extent.

Mr. BAILEY. Now, that the judgment of the court projects itself into the future is obviously true. If the court decrees that the land which I claim belongs by superior title to the Senator from Ohio, that not only binds him and me in that proceeding, but it binds everybody else in interest, so far as the judgment could go. It binds my heir or his heir, but it does not bind anybody except those who claim under him or under me. Other people who have a collateral or possibly an antagonistic interest are not concluded by that judgment. They ought not to be bound by it. So I say—

Mr. FULTON. The Senator from Texas does not understand me as contending that.

Mr. BAILEY. No.

Mr. FORAKER. I hope the Senator does not understand me as saying that. I said that is where came the necessity for creating a special procedure by statutory enactment.

Mr. BAILEY. The Senator from Ohio is always so clear and to the point that I take it he must have misunderstood my statement or he would not have found it necessary to have argued that the courts could enjoin a rate either too high or too low, and I supposed the Senator was replying; and he was making a sufficient reply if that had been my contention. I have never contended that, and I never will contend it. Indeed, the very basis of my contention against this power of determining a future rate by the court is that the business of the court is to determine only the reasonableness or the unreasonableness of a given rate when challenged in a judicial proceeding.

Mr. FORAKER. If the issue be confined to that question, my contention is that you may make an issue as to whether or not, the road being charged with exacting an unreasonable and unjust rate, something else is a reasonable rate by alleging in your bill what is reasonable and just.

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*March 14, 1906.*

Mr. FORAKER. Mr. President, the Senator from Massachusetts [Mr. LODGE] has so completely made the speech I was intending to make that I will yield the floor with only another word.

It is true that railroad men and men representing railroads appeared before the committee. Why should they not appear before it? Are we to legislate about a great interest of this kind without permitting men who are interested in such property to be heard? Was it not an advantage to us to have men come who were familiar with this business to give us the benefit of their views? Are the railroad men of this country criminals? They are citizens and entitled to all the rights of other citizens.

Mr. President, I have heard a great many men in the course

of my experience in public life assume to be the special representatives of the people, but I have never yet heard one assume to be such special representative who was any more the representative of the people than the average man, to say the most for him.

I do not like that assumption on the part of anybody. I have no interest, and I do not believe any other Senator here has any interest whatever, with respect to this legislation except only to make the best bill we can make to remedy the evils that are justly complained of. I think I have the best bill that has been offered. [Laughter.] I have spoken on it once, and I am going to speak on it again.

While I am going to vote for a court review when that question comes up, the Senator from Iowa [Mr. DOLLIVER] is right when he says the result will be to force two hearings where there should be only one, and to make nugatory in large degree that which it is intended the bill shall accomplish. But I have no special responsibility for this bill. I am anxious that it shall be made as good as it is possible to make it, and I am going to vote for a review, because I think that is necessary to the proper protection of these great property interests. But no matter how amended, this bill raises all kinds of troublesome questions, and must, I am sure, prove a disappointment.

Now, I think instead of having that kind of legislation, we should have the kind of legislation suggested in the measure I have presented, legislation which amounts simply to an amending of the Elkins law, in its third section. The Senator from Maryland [Mr. RAYNER] has pointed out how effective that law has proven. It is effective to prevent rebates; it is effective to prevent discriminations; and if you will amend it in the way I have suggested, it will be equally effective to prevent excessive rates; and it will do it in an expeditious way, and it will do it in a way that will be of advantage to the shipper, and the shipper will prefer it to the legislation you are proposing to enact. That section when so amended will provide that when anybody wants to make a complaint of excessive rates, or discriminations, or about a rebate, nothing more will be necessary than to call the attention of the Interstate Commerce Commission informally to it, and the Commission, without any expense to him, shall make such preliminary investigation as it may see fit to make to enable it to determine whether there be probable cause for the complaint, in which event the Commission shall send it to the court, where it shall be prosecuted in the name of the United States Government, and at the expense of the United States Government, and without any expense whatever to the shipper, where all rights, under the expedition act referred to by the Senator from Pennsylvania [Mr. KNOX] as this provision, will be expeditiously and efficiently determined.

It seems to me that the great trouble, as I have said heretofore in the Senate, speaking on this subject, with the shippers heretofore has been that they can not single handed and alone cope with railroads in litigation. It is unjust to a shipper. He is at too great a disadvantage, there is too much burden of expense upon him, when he is required to go out and fight before the Commission or fight in the courts a great railroad in this country. We ought to take that burden from him. Then no shipper will be afraid to challenge a rate, to challenge a rebate, to institute a proceeding to have relief finally secured in



the court where there will be no clashing with constitutional principles or rules with respect to the rights of property or the rights of individuals.

I have already said, but I want to say it again while I have the attention of everybody, that I do not believe this legislation which we now have under consideration is worth the paper it is written on, if passed in this form. It is unconstitutional, Mr. President, not alone on one ground, but on half a dozen grounds. I have already pointed out some of these constitutional defects. I am going to point out other grounds on which it is, in my opinion, unconstitutional, but if it were not unconstitutional, it will prove disappointing in its consequences. I mean it will disappoint the people who want this legislation.

The shippers of this country will not under it get the relief they are seeking.

Now, why encounter all these serious questions? Why run the risk of all this disappointment when by sticking to the courts of the country, where we always have found relief, we can work out efficient remedies against every evil that has been suggested? I intend to offer, and to speak in a few days when I get the opportunity in support of, an amendment to the third section of the Elkins law, either as a substitute for this bill or as an additional section to be added to it—an alternative section. On account of the lateness of the hour I will not enter upon an argument now. I have before me a number of authorities sustaining the competency of Congress to confer on the courts the right to enjoin, when a rate is challenged as excessive, all the excess of that rate that may be over and above the statutory standard of what is just and reasonable. The authorities, I will content myself with saying, are, to my mind, conclusive, and there is no serious legal question if that be so that could possibly arise upon that kind of legislation.

So the question I want to put to every Senator and to have every Senator think about is, whether he will vote for a bill which the Senator from Maryland says will be clearly unconstitutional, for the reason he has assigned, and which other Senators have said will be clearly unconstitutional, for the reasons they have assigned, and which I have undertaken to show is unconstitutional on half a dozen different grounds. Will we vote for that kind of a measure, and thus, if it perish in the courts, disappoint those who seek the passage of the bill, or, if it survive, disappoint the people by its remediless result?

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*April 5, 1906.*

Mr. FORAKER. Mr. President, the Senator from Texas [Mr. BAILEY] has only anticipated what I wanted to say. As the Senator from Texas has well said, the charge—for it is not anything short of that—that Senators who are in opposition to the bill he is supporting are in conference here from time to time with presidents of railroads—

Mr. ALDRICH. With a view of defeating the bill.

Mr. FORAKER. With a view of defeating the bill is a most serious one, and the Senators referred to should be named. I respectfully demand of the Senator from Iowa that he name the Senators, so that if there is a member of this body engaged in such conferences we may know who it is.



Mr. DOLLIVER. I shall take the liberty of not pursuing that controversy.

Mr. FORAKER. Well, Mr. President, it seems to me the Senate has a right to know. I do not imagine the Senator refers to me, but I do know, as every other Senator must know, that the suggestion of the Senator was broad enough to include every member of this body.

Mr. DOLLIVER. I have never dreamed that there was any impropriety in consulting with presidents of railroads. I presume hardly a man here but has sought the counsel and suggestion of those who were practically familiar with railway business. In connection with my honorable friend from Ohio, I spent three months last spring hearing the views of as distinguished a group of railroad managers as ever assembled anywhere in the world, and I have never thought that a man could not talk with railroad presidents without being charged with some form of impropriety. I have no notion that a man can be guilty of the offense of consulting with the Chief Magistrate of the American people without being made the subject of ridicule and misconstruction of his motive.

Mr. FORAKER. I have never complained of anyone who has seen fit to confer with the Chief Magistrate of the nation. I do so whenever I see fit to and he will permit it. I am always glad to do it. I never think of anyone conferring with the President having any improper motive in view.

So far as conferences with railroad presidents are concerned, I do not know of any on the part of any member of this body. It is true that when the Senate Committee on Interstate Commerce had hearings, covering five or six weeks last spring, a number of railroad officials appeared before that committee and gave their testimony, just the same as any other witnesses; but I do not know of any member of the committee conferring with those railroad officials at that time. I do not know of any member of that committee or any member of this body conferring at any time or place with any railroad official concerning this proposed legislation.

Now, Mr. President, it will not do for the Senator to say he had no thought or purpose of insinuating that there was anything improper in such conferences, for the Senator said in so many words that Senators had been conferring with railroad presidents in order that they might better know how to defeat this legislation. Only one inference could be drawn from that, and that was that men who do not agree with the Senator from Iowa in his support of this measure were representing in some such way as has been charged railroad interests or railroad officials. I know of no railroad officials having anything whatever to do with this legislation, except only to express their views when they came before the committee. No railroad official, so far as I can recall, has ever talked with me at any time or any place, and I do not believe that any railroad official has ever talked in any improper way with anybody else who is in opposition to this proposed legislation.

Mr. TILLMAN. If the Senator will pardon me, I saw in the newspapers a day or two ago a statement that President Mellen, of one of the New England roads—I have forgotten which—had been to the White House for lunch, conferring with the President about this matter, and rumor had it that he went

there to demand that certain features of the Hepburn bill should be stricken out—that part of the bill which relates to requiring the railroads to keep a certain kind of books and no other kind.

While I am on my feet, if the Senator will pardon me, I should like, as one witness, to give some little testimony in this interesting controversy among the brethren on that side as to what took place at the hearings before the Interstate Commerce Committee. I can not recall the date, but I recollect very distinctly that a gentleman came into the committee room and, after shaking hands with a few of his friends, passed on to the inner sanctuary, and I did not see him any more; but I was afterwards informed that he was Mr. A. J. Cassatt, of the Pennsylvania road. Now, what his business was or with whom he conferred I do not pretend to say. I merely state that as a fact.

Mr. FORAKER. Mr. President, I do not know anything about the occasion to which the Senator refers. I never met Mr. Cassatt but once in my life, and I met him at the White House then. He was there calling upon the President.

Mr. President, let me call attention to the fact in this connection, now that Mr. Cassatt has been named in the way he has, that he is one of the railroad presidents of the country who has been favoring this proposed rate making on the part of the Government for the railroads of the country, and Mr. Mellen, who was referred to, is another. They have been advocates of this kind of legislation all the while. There are railroads on both sides of the question. At least, such is the report as to Mr. Cassatt and Mr. Mellen.

I have very frequently seen notices of their presence in the city, but never having seen Mr. Cassatt but the one time, of course I do not know what he was here for, except only as the newspapers may have advised. I never met Mr. Mellen; I do not know him at all; but I have noticed that he has been here frequently and that at such times he was usually in conference with the President, and always about railway rate legislation.

I can understand, Mr. President, why Mr. Cassatt, representing the Pennsylvania Railroad, might favor this kind of legislation. He represents a railroad that covers the heart of the country; a railroad so situated and so powerful, having so many advantages, that it could grow inordinately rich on what might destroy other railroad properties. I do not know of anybody else equally fortunately situated. If anybody else is so equally fortunately situated, it is Mr. Mellen and his road; and they are both in favor of this kind of legislation.

But, Mr. President, I do not imagine that either of these gentlemen, or that any other railroad official, has been in Washington to see the President or to see any Senator in regard to railway rate legislation with any improper motive in view. I do not know why they should not come here when their great properties are being legislated about and give us the benefit of their special knowledge. I know I was very glad to hear them when they came before the Interstate Commerce Committee. They were able men, intelligent men, and they gave us information that it was necessary for us to have to enable us to intelligently legislate; and I have no doubt they have been able

to give the President a great deal of information that has been appreciated by him.

What I object to is that the Senator from Iowa or any other Senator should stand up here in this body and refer to a circumstance of that kind in such a way as that people might rightfully deduce from his statement that it was intended by him to charge that improper influences were being exerted, and that Senators were yielding to such improper influences. That is an attack on the whole Senate, and should not be made unless based on facts. That is all I care to say about that.

Mr. President, the Senator alluded to something entirely personal to myself. He said that on last Saturday I sent to the legislature of Ohio a letter, in which I undertook to claim that I was supporting the President in contending here for an adequate court review. I do not suppose that what I said to the Ohio legislature on that occasion is a matter of much importance to Senators, but I should like, not troubling Senators to stop and listen to it, to have what I did say inserted in the RECORD, so that along with that statement of the Senator from Iowa those who may see fit to read the RECORD can read and see what I did say. Therefore I send to the Secretary's desk a copy of that letter as it was published in the Cincinnati Commercial Tribune, and ask that it may be printed in the RECORD, without reading, unless Senators desire that it shall be read, but I do not suppose that the Senate does so desire.

The VICE-PRESIDENT. Without objection, the paper referred to by the Senator from Ohio will be printed in the RECORD without reading.

The paper referred to as follows:

[Special dispatch to Commercial Tribune.]

"YOU CONFIRM MY OPINION," FORAKER WRITES ASSEMBLY—SAYS HIS COURSE ON RATE REGULATION IS IN ACCORD WITH LEGISLATURE'S EXPRESSED WISHES AND MEASURES—QUOTES TAFT'S AKRON AND COLUMBUS WORDS—SHOWS HOW ADMINISTRATION HAS STOOD FOR COURT REVIEW.

COMMERCIAL TRIBUNE BUREAU, OUTLOOK BUILDING,  
Columbus, Ohio, March 31, 1906.

In a letter answering the request of the general assembly that he support the position of President Roosevelt on the railroad rate question Senator FORAKER exhaustively explains his own position.

The letter was drawn out by the O'Roard resolution.

Senator FORAKER's colleague, Senator DICK, wrote to the Ohio assembly, indorsing the sentiment of the O'Roard resolution.

#### SENATOR FORAKER'S LETTER.

Senator Foraker's letter is as follows:

*The General Assembly of Ohio:*

GENTLEMEN: I received by due course of mail your house joint resolution No. 8, passed February 23, 1906, of which the following is a copy:

"House joint resolution No. 8, relative to railroad rates.

"Be it resolved by the general assembly of Ohio, That the members of the general assembly of Ohio believe that President Roosevelt was right when he recommended to Congress that a law be passed 'conferring upon some competent administrative body the power to decide, upon the case being brought before it, whether a given rate prescribed by a railroad is reasonable and just, and if it is found unreasonable and unjust, then, after full investigation of the complaint, to prescribe the limit of rate beyond which it shall not be lawful to go, the "maximum reasonable rate," as it is commonly called, this decision to go into effect within a reasonable time, and to obtain from thence onward, subject to review by the courts."

"Sec. 2. That we commend the wisdom of such legislation by the Congress of the United States, and request the Senators and Members

of the House of Representatives from Ohio, in Congress, to vote for the passage of a law containing such provisions.

"SEC. 3. That copies of this resolution be sent to the Senators and Representatives of Ohio, in Congress, by the secretary of state.

"C. A. THOMPSON,

*"Speaker of the House of Representatives.*

"JAMES M. WILLIAMS,

*"President pro tempore of the Senate.*

"Adopted February 23, 1906."

#### WHY HE DELAYED ANSWER.

I have delayed answering until now, because I observed that you had under consideration a bill creating a railroad commission and empowering it to fix railway rates and prescribe railway regulations for Ohio.

It occurred to me that in the consideration of that measure you would find it necessary to consider and act upon some of the questions that have been discussed in the two Houses of Congress, and that it might be easier, after such action, to make answer to your request.

I now learn that the bill, with some amendments, has passed both houses, and that it will, no doubt, receive the approval of the governor and become a law.

#### CONTAINS AMENDMENT.

I have a copy of it as it passed the house, and find, upon examination, as I anticipated when I concluded to await your action, that it contains an amended provision, to which I shall call attention, that has been accepted by the senate without charge, as I am informed.

But before pointing this out, allow me to say again, as I have repeatedly said heretofore in public utterances and in public print, that there is no difference of opinion upon the point that there are abuses practiced by the railroads that should be prohibited and remedied, nor is there any difference of opinion as to the necessity for some kind of additional legislation to accomplish this purpose.

The sole difference is as to what that legislation shall be.

#### TWO PROPOSITIONS ADVANCED.

Generally speaking, two propositions have been advanced: One to confer the rate-making power, as recommended by the President, on the Interstate Commerce Commission; the other to broaden and strengthen the jurisdiction and power of the courts under existing laws.

Many bills have been introduced embodying the former idea; a less number the second.

The first class of bills was intended by their respective authors to carry out the President's recommendation, and were supposed to be in full compliance with the requirements thereof; the second class aimed to accomplish the same purpose, but by different methods.

Out of all these many propositions finally came the so-called "Hepburn bill," which, according to the announcements in the newspapers, had the special approval of the President and his Attorney-General, and was to be supported as an Administration measure.

It passed the House without amendment, although there was much dissatisfaction expressed therewith by the Members of that body; was considered in the Senate Interstate Commerce Committee, and, although there was much objection and discussion, all amendments were finally rejected and it was reported to the Senate, and is now under consideration as it came from the House.

It is earnestly and vociferously insisted that it shall now be passed by the Senate become a law just as it passed the House.

Before commenting on this proposition, I call attention to the fact that the President, in his message of December 6, 1904, recommended that—

"The Commission (Interstate Commerce) should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place, the ruling of the Commission to take effect immediately and to obtain unless and until it is reversed by the court of review."

#### HOW TAFT INTERPRETED.

Secretary Taft, in his speech as temporary chairman of the Ohio Republican State convention of May 24, 1905, interpreted this recommendation of the President and the Esch-Townsend bill, which had then passed the House of Representatives, as meaning that the orders of the Interstate Commerce Commission fixing rates and regulations, when made, shall be effective until set aside by judicial hearing.

In his speech at Akron, October 21, 1905, Secretary Taft further said:



"The President's proposition is that the power of the Commission shall be to hear a complaint that a particular rate is unreasonable, to declare it to be unreasonable, and to fix the rate which should be reasonable, and embody this finding in an order, which should stand until set aside by a court, either upon preliminary or final hearing."

#### WITH ROOSEVELT'S APPROVAL.

It is believed, upon what is thought to be good authority, that both these speeches of Secretary Taft were made with the knowledge and approval of the President as correctly setting forth his views.

In the Esch-Townsend bill, and in the interstate-commerce bill, framed by the Interstate Commerce Commissioners, by them presented to the Interstate Commerce Committee of the Senate in November, 1905, and which was at the time supposed to be the most intelligent and authoritative presentation of the President's views, in the form of a bill, that could be framed, as well as in nineteen other bills that have since been introduced in the Senate and the House at this session of Congress, all, as their respective authors understood and believed, in substantial conformity in this respect with the President's recommendation, it was carefully provided in one form or another that the orders of the Commission fixing rates and prescribing regulations should be subject to review by the courts in proceedings instituted therefor by either the carrier, the shipper, or any other party interested, as to whether or not they were lawfully made in accordance with the terms and conditions of the proposed statute that they should be just and reasonable.

#### PROVIDED IN SIXTEEN STATES.

In every one of the sixteen States of the Union where railroad commissions or other officials have been authorized and empowered to fix rates and prescribe regulations, suitable provisions have been made for a review by the courts of all such orders.

Such was the previous discussion, and such the character of legislation on the subject in the different States, and such the character of all the bills that had been introduced when the Hepburn bill made its appearance.

Like all the other bills, it conferred the rate-making power, as recommended by the President, on the Interstate Commerce Commission, but unlike every similar statute enacted in the various States and unlike every other similar bill introduced in Congress, and in direct conflict with the utterances of the President and every other person who had spoken for him, it not only fails to provide for a review by the courts, but it is intentionally so drawn, as some of its leading advocates acknowledge, as to prohibit such a review, not only upon the petition of the carrier, but also upon the petition of the shipper or any other person or community interested or affected by the orders of the Commission.

#### ALL ELSE OVERSHADOWED.

This feature of the bill was so unexpected, so unprecedented, so un-American, and so in conflict with that rule of American life and American institutions that every man is entitled to his day in court, that every other question raised by the proposed legislation has been overshadowed and almost lost sight of in the debate that is now in progress.

Notwithstanding the acute character of this particular question, in some remarks I made to the Senate on the 28th of February I took occasion to discuss the general subject at length, pointing out as well as I could a number of the provisions of the bill that are, in my judgment, unconstitutional, and giving reasons why, in my opinion, the bill, if it should be enacted and be upheld by the courts, will prove a sore disappointment to all who are interested in securing such legislation, because of its manifest deficiencies as a remedy for any trouble of a serious character of which complaint has been made.

#### SENDS COPY OF SPEECH.

In view of your request, I have taken the liberty of sending a copy of these remarks to each member of your body, in order that all may know in full, if they so desire, the views I entertain, and the reasons for them, with respect to this measure, and with that purpose in mind I ask that those remarks may be considered by reference as a part of this communication.

It is unnecessary for present purposes to review those remarks further than to call attention to the fact that I have undertaken to show that if we enact the Hepburn bill as it passed the House we must encounter a number of the most serious constitutional and legal questions, on account of which the measure will probably perish in the courts, and



that, if it should stand that test, the law will not prevent or in any manner remedy the practice of giving secret rebates, making discriminations among individual shippers, the lack of uniformity in classification, or the evil to communities of unjust and discriminatory relative rates.

#### HOUSE COMMITTEE ADMITS IT.

The House committee in its report admits and concedes all this, and acknowledges that it does not attempt to deal with these evils.

In those remarks I undertake not only to show these defects of the Hepburn bill, but also to point out, upon facts and testimony of an indisputable character, that by a simple amendment of the present law, which I have already introduced in the Senate, the existing remedial provisions of the statute can be so broadened and strengthened as to reach and effectively prevent all these abuses.

This amendment involves but one hearing, and that in the courts, in a proceeding in the name of the United States without trouble to the shipper, under a requirement that the courts shall proceed summarily to hear the complaint, postponing all other business, in so far as may be necessary to enable it to do so, thus avoiding all delays.

#### WILL BE MORE EXPEDITIOUS.

On this account this proceeding will be far more expeditious than the proceeding provided by the Hepburn bill.

It goes further and relieves the shipper of all expense of the litigation on account of which he has been heretofore so burdened and hampered, that, in many cases, he has preferred to suffer the wrongs to which he has been subjected rather than undertake, single handed and alone, to fight a railroad before the Commission or in the courts.

In addition to these advantages, which would be of incalculable value to the aggrieved shipper, the proceeding would be under a statute that has already been upheld by the Supreme Court of the United States and under which more has been done to correct railroad evils than under any act of legislation that has yet been enacted by any of the States or the Federal Government.

#### NOTHING EXPERIMENTAL.

No constitutional or legal questions can arise, for all have been discussed and passed upon by the court of last resort. There would be, therefore, in such a proceeding nothing experimental.

I have been hoping that in some form or other this kind of legislation, which could not prove otherwise than effective, may be enacted; but assuming that the Hepburn bill in some form will be passed and become a law, I shall consider it my duty to do all in my power to make it a constitutional, workable, and effective measure.

My oath of office requires that, and I would not only violate that but also my duty to my constituents and the whole country if I were to do otherwise than follow its requirements.

#### CONFIRMS HIS OPINION.

With respect to this duty you have relieved me of all embarrassment by the action you have taken in adopting the amended provision above referred to as a part of the measure you have just passed, to provide for a full and complete review in the courts of the orders of the Commission you have created, for now, in view of your action, I feel confirmed in the opinion that it is my duty to insist upon such amendments to the Hepburn bill as a condition precedent to the support of it as will secure to carriers, shippers, communities, and all others who may be parties in interest affected by the orders of the Commission a right to appeal to the courts for a judicial determination of any questions that may arise involving or affecting their interests, for if such a provision is important in a State statute it requires no argument to show it is much more important in a statute that applies to the whole country.

#### THE PROPER INTERPRETATION.

I so conclude because this is necessarily and properly the interpretation you have placed upon the recommendation of the President, which you have quoted in your resolution.

Your action was, of course, taken intelligently, deliberately, and officially, but aside from the fact that it was taken in this intelligent and deliberate way is doubtless the further fact that, because of the equity and justice involved, you would not change your action even though the President might, for some reason sufficient for himself, see fit to change his own views with respect to such a provision, as it has been claimed, erroneously, I hope, he has done.

## CONGRATULATES ASSEMBLY.

But however that may be, upon your action in adopting this amended provision I most heartily congratulate you and the people of Ohio, for by it you have, at an opportune time, fittingly rebuked the sentiment that would, if possible, excite distrust of the courts, destroy their usefulness, and debar them from their appropriate participation in the settlement of the great and far-reaching questions which legislation of this character must precipitate.

At the same time you have put Ohio in harmony with all her sister States and with the spirit of fair play that underlies and characterizes our Constitution and all our institutions of government.

With felicitations upon the near approach of the conclusion of your labors and upon the very creditable record you have made, I remain, with sentiments of highest esteem,

Very truly, yours, etc.,

J. B. FORAKER.

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*May 3, 1906.*

Mr. FORAKER. Mr. President, I do not rise to take issue with anything that has been said by the Senator from Texas [Mr. BAILEY] or by any other Senator as to the question of power on the part of Congress to prohibit the granting of temporary restraining orders by the courts, nor do I intend to discuss the question of the effect of providing for a court review of the orders that may be made by the Commission, if this bill becomes a law, or the effect of omitting to provide such court review; but I rise to call attention to the attitude heretofore sustained with respect to both these questions by the Interstate Commerce Commission. I do that feeling that there is greater propriety in it since the junior Senator from Wisconsin [Mr. LA FOLLETTE] addressed the Senate a few days ago and in terms of unmeasured praise told us of the experience of the Interstate Commerce Commissioners and their competency by reason of that experience to advise us as to the character of law that should be enacted.

I do it for another reason, Mr. President. Until within the last three or four months, according to my recollection, we never heard of a proposition from any source to confer upon the Interstate Commerce Commission power to make rates and to adopt and establish regulations governing the operations of the railroads of this country without making the exercise of that power subject to review by the courts. But suddenly, since the beginning of the present session of Congress, the proposition has been advanced and has been embodied in the Hepburn bill, which is now before the Senate, and in other bills that this great power should be conferred upon the Commission, and that it should be exercised without any review of it by the courts.

I call attention, in the first place, to the report of the Interstate Commerce Commission made in December, 1897, being the Eleventh Annual Report of the Interstate Commerce Commission. This is the first report that was made by the Commission after the decision in what is known as the "Maximum Rate case," in which case the court held that the Interstate Commerce Commission had no power to make rates under the original interstate-commerce act, which was under consideration in that case.

After having called attention to that case, and to the nature of the decision in that respect, and after having called attention to the fact that it was necessary, in the opinion of the Inter-

state Commerce Commission, for us to amend the law so as to give them this rate-making power, the Commission then took up for discussion what I now want to read, at page 34 of their report, under the subhead "To what extent should orders be subject to judicial review." The Commission said:

If this view should prevail, to what extent and in what manner ought the orders of the Commission be made the subject of judicial review? It is generally understood that under the Constitution of the United States an order for the payment of money can not be enforced without giving the defendant an opportunity for a trial by jury.

That general and common understanding continued until this particular bill was framed in the House and sent to the Senate as passed by the House. Continuing, the Interstate Commerce Commission said:

Such orders must therefore stand very much as they do at present. They are, however, a very insignificant part of the entire number and from their very nature will be such that ordinarily the carrier will comply with them without the necessity of any steps for their enforcement. The great bulk of our orders, as already stated, must pertain to the future. They will be orders fixing either a maximum or a minimum rate. The only power which courts can exercise over orders of this sort is to vacate them. They can not be invested with authority under the Federal Constitution to make and enforce a modified order.

For what reasons, then, should the court be allowed to vacate an order? The only appeal which lies from the decrees of the English railway commission is upon questions of law. There is no appeal upon questions of fact as to which the decision of the commission is final. This is analogous to the verdict of a jury or the findings of fact by a special master in chancery under the equity practice of some States.

Much might be said in favor of applying the same idea to the orders of this Commission. It can hardly be expected that ordinarily the case, upon proceedings in review, will come before a tribunal which is in theory better fitted to determine questions of fact than the one which passes upon them in the first instance.

Upon the other hand, the right of review is always a safeguard—

Now, I want the attention of Senators to this, because it is authority which surely at least the Senator having this bill in charge ought to give heed to:

Upon the other hand, the right of review is always a safeguard. It puts a certain restraint upon the judgments of any tribunal. It would not probably embarrass the practical operation of the law, and it might prevent the occasional miscarriage of justice if the whole case, both upon the law and the facts, were submitted to the court.

Mr. TILLMAN. Mr. President—

Mr. FORAKER (reading)—

The question of review would then be—

Now listen—

Is the order lawful, just, and reasonable? If so, the proceedings in review are dismissed. If not, the order is vacated. No new order can be made by the court. If the order is vacated, the case should be sent back to the Commission for further proceedings.

I ask the Senator to bear with me a minute until I read another paragraph.

Mr. TILLMAN. I was just trying to find what the Senator is reading from.

Mr. FORAKER. I am reading from the eleventh annual report of the Interstate Commerce Commission. I am reading the views of that Commission as to the propriety of conferring upon the court the power to review an order of the Commission making rates and establishing regulations, a power they were asking in that report to have conferred upon them by Congress.

Mr. TILLMAN. If the Senator will allow me, there can be no difference of opinion between us, I think, on that point. I have always said I am willing and anxious to get a review and to give both the shipper and the carrier an opportunity to have the court pass upon their rights.

Mr. FORAKER. That is true; but I want to call the Senator's attention to the extent to which the Commission recommended this review shall go. Now, further:

The right to apply for review should be exercised within a time limited or not at all. When application is made for review, the Commission should send to the court the testimony taken before it, which should constitute the record upon which the case is reviewed, unless the court is of the opinion that there is testimony which is material to a proper disposition of the case and which could not or under all circumstances ought not to have been given before the Commission. In that case the court should instruct the Commission to take and send up the additional testimony.

Now, one other paragraph as to whether or not the court should be authorized to grant temporary restraining orders pending this review:

The important question is, What effect should be given the order of the Commission pending the proceedings for review? If the carrier is obliged to obey an improper order, ordinarily it can obtain no redress. If the carrier is not obliged to obey a proper order, the public can ordinarily obtain no redress. When a question has been fairly and fully tried before the Commission, it appears to us that ordinarily the order of the Commission should be effective until the court has declared against it. There are manifestly, however, instances in which this ought not to be true. Probably the court should be invested with power, when application for review is made, to determine whether or not the order shall take effect pending such proceedings.

I might read further to the same effect, but I have read enough to show the views entertained by the Interstate Commerce Commission at that time. That was a time when they were giving exceptionally careful attention to the subject, and to what they said in regard to it, in their first official report after they had been, by the decision of the Supreme Court, stripped of that power which until then they had claimed to possess.

Now, in their reports from that time down to the present there has never appeared anything in conflict with what they said in their eleventh annual report. That they had not changed their views prior to November last—November, 1905—we have conclusive evidence in the form of a bill which at that time they sent to the Interstate Commerce Committee of the Senate for the consideration of that committee as a proper measure to recommend to the Senate for passage. After providing that they should be invested with power to make rates and regulations and put them into effect, they proceeded, at page 24 of the bill, as it was printed at the time, to say as follows:

Any carrier may, within thirty days from the service upon it of any order, other than an order for the payment of money, begin in the circuit court of the United States for the district in which its principal operating office is situated, proceedings to set aside and vacate such order; and in case such order affects two or more carriers, such proceedings may be brought by them jointly in the district in which the principal operating office of either of them is situated. Such proceedings shall be begun by filing on the equity side of the court a petition or bill in equity, which shall briefly state the matters embraced in such order and the particulars in which it is alleged to be unlawful, and in such proceedings the complainant and the Commission shall be made defendants.



Upon the filing of such a petition or bill the clerk of such circuit court shall forthwith mail a copy thereof to the Commission, with notice that the same has been filed; and the Commission shall thereupon, within twenty days from the receipt of such notice, cause to be filed in such court a complete certified copy of the record in the proceeding wherein the order complained of was made, including the pleadings, the testimony, and exhibits, the report and opinion of the Commission, and its order in the premises. If it is impracticable to send up a copy of any exhibit, the exhibit itself may be forwarded. The defendant may answer or demur to such petition or bill according to the usual practice in equity cases.

If upon hearing such petition the court shall be of opinion that the order of the Commission is not a lawful order, it shall set aside and vacate the same; otherwise it shall dismiss the petition. In either case the court shall file with its decision a statement of the reasons upon which the decision is based, a copy of which shall be certified forthwith to the Commission. If the order of the Commission is vacated, and if the defendant does not appeal to the Supreme Court of the United States, the Commission may reopen the case for further hearing and order, or it may make a new order without further hearing, not inconsistent with the decision and opinion of the circuit court. Any such subsequent order shall be subject to the same provisions as an original order.

Upon the filing of such a petition the circuit court may, upon such notice to the complainant and to the Commission as the court deems proper, extend the time within which such order shall take effect, not to exceed in all sixty days from the date of service of the order upon the carrier. The court may also, if it plainly appears that the order is unlawful, and not otherwise, suspend the operation of the order during the pendency of the proceeding or until the further order of the court.

Mr. NELSON. Will the Senator allow me? From what bill is he reading?

Mr. FORAKER. I am reading from the bill that was framed by the Interstate Commerce Commission and sent by that Commission to the Interstate Commerce Committee of the Senate as an embodiment of their ideas of what this legislation should be; and I am reading it to call attention to the fact that down until last November, at the beginning of the present session of Congress, the Interstate Commerce Commission continued to entertain precisely the views so elaborately and so ably expressed in their eleventh annual report in regard to the propriety of a full review by the court, including a review not only upon the evidence submitted to the Commission, but upon all other evidence that the courts might hold it was proper for them to hear in order that equity, justice, and right might prevail. I am reading it for the purpose of showing that they still continued down until last November to be of the opinion expressed by them in their eleventh annual report, that not only should there be this full, complete, broad review by the court, but that there should also be power conferred upon the court pending that review to restrain by interlocutory order the execution of the Commission's order until the court could finally determine its validity.

Now, Mr. President, not only was that the well-known view of the Interstate Commerce Commission, but it was the view of everybody else who discussed this subject, so far as I have any recollection or any knowledge. Not until after that time did we hear of anybody proposing a bill conferring this autocratic power upon the Interstate Commerce Commission such as the pending bill provides for without subjecting the orders it was to make to a review by the court. Suddenly there came a change. The Hepburn bill was introduced. It did not contain any such provision. A few other bills, I believe, about the



same time were introduced that did not contain any such provision. Now, why was that change made?

Mr. DOLLIVER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Iowa?

Mr. FORAKER. Certainly.

Mr. DOLLIVER. My recollection of the review suggested by the bill sent to the Committee on Interstate Commerce by the Interstate Commerce Commission is that it submitted only one proposition to be considered by the court, and that is the lawfulness of the Commission's order. Am I correct about that?

Mr. FORAKER. That was the general proposition, but in determining whether or not it was lawful the courts were to have before them the complete record, including all the pleadings and all the testimony and all the exhibits and all the orders and all the steps taken.

Mr. DOLLIVER. If the Senator from Ohio will pardon the suggestion, he says that nobody ever suggested that the courts ought not to be clothed with authority to rehear and reconsider these findings. I call his attention to the fact that before the Interstate Commerce Committee, sitting as an investigating committee, there appeared three of the most famous and skillful railway lawyers in the United States—Mr. Morawetz, general solicitor of the Santa Fe; Robert Mather, now president of the Rock Island, and Mr. Hines, at that time, I think, connected in an official way, not in the office, however, of the general solicitor of the Louisville and Nashville Railroad.

I call the Senator's attention to the fact that these great students of railway law united in testifying before our committee that you can not, without violating the Constitution of the United States, give over to the courts any power to review the wisdom and discretion of the Interstate Commerce Commission, and upon that ground they based their protest that this power of making rates ought not to be conferred upon the Commission, because in the nature of our jurisprudence you can not, directly or indirectly, turn over the findings of the Commission to be reheard, reconsidered, and readjudicated by any court of justice.

Mr. FORAKER. Mr. President, the Senator wholly misapprehends what the witnesses named testified to before the Interstate Commerce Committee of the Senate. What they testified to in that connection was that we could not create an administrative board and have the character of hearing before it that we were contemplating and discussing at the time, and then when it made an order after such hearing, and as a result of it, take an appeal from that board to a court, because no court would entertain an appeal from an administrative authority. But they never said, neither did any other witnesses before that committee say, that we could not authorize an independent action complaining of an order that had been made and thus review it in an independent proceeding such as has been discussed, such as has been proposed by those who favor what we call a "court-review plan" in this debate here in the Senate. That is the distinction. They did unite in saying that. Nobody ever controverted that proposition; nobody ever insisted to the contrary.

But, Mr. President, suddenly there appeared one other idea that I am about to call attention to. What I was talking about particularly was the record made by the introduction of bills. I never heard of any bill omitting to provide for some kind of court review until some time after this bill of the Interstate Commerce Committee had been brought before our committee and had been considered there long enough to excite considerable discussion all over the country.

A little bit later a bill was introduced by the Senator from Iowa himself—

Mr. DOLLIVER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Iowa?

Mr. FORAKER. Certainly.

Mr. DOLLIVER. The bill to which the Senator from Ohio refers was introduced in the Senate.

Mr. FORAKER. I understand that. I say a little bit later it was introduced, but not until after the Senate convened. I believe the Senator omitted to provide for any court review in his bill.

Mr. DOLLIVER. I recognized the fact in the bill which I had the honor to introduce that it was not possible for Congress to take away from the courts their right to attack an order of the Commission on account of its being unlawful—that is to say, on the ground of its being a violation of constitutional right.

Mr. FORAKER. Whatever the reason may have been, I am simply talking about the fact. I am not disposed to have any controversy with the Senator as to whether there is power in Congress to take away from the courts the right to review an order made by the Commission.

Mr. LONG. I was not present when the evidence to which the Senator refers was taken by the committee, but I have read that evidence, and if the Senator will refer to volume 2, page 801, of the hearings, he will find that Mr. Morawetz expressed the opinion that it was not within the power of Congress to confer upon the courts the performance of duties of an administrative or a quasi legislative character.

Mr. FORAKER. Mr. President, nobody takes issue with that statement. I have no doubt that Mr. Morawetz has so testified. I never heard of anybody testifying to the contrary. All are agreed that only judicial power can be conferred upon the courts, and Mr. Morawetz no doubt so testified.

The question raised by the Senator from Iowa [Mr. DOLLIVER] was whether or not the three witnesses named by him testified that it was not competent for Congress to confer upon the courts power to review the orders made by the Commission. My answer is that what they testified to was that it was not competent for us to authorize an appeal from an administrative board to the court direct, but they never pretended any such thing, nor did anybody else, so far as I have any recollection, as that you could not bring an independent action and that we could not give jurisdiction to the court to entertain an independent action to attack an order, or complain of an order and seek to have it enjoined, that the Commission had made and was seeking to enforce.

Mr. DOLLIVER. Mr. President, I have before me the testimony of the witness to whose testimony I alluded a moment ago, and I find that Mr. Morawetz said:

Congress can require the courts to pass upon the question whether a rate fixed by a commission is confiscatory. It can also require the courts to determine whether a rate fixed by a commission or by a railway company is excessive—illegally high. But Congress can not require the courts to pass upon the mere business policy of fixing a rate anywhere between those two extremes.

I venture to say, without occupying too much of the Senator's time, that the other great railway lawyers to whom I have referred coincided in that opinion; and it is not a mere formal compliment to the honorable Senator from Ohio to say that his own speech, made here early in the session, seems to coincide with this view.

Mr. FORAKER. Mr. President, the Senator is mistaken about that. What the Senator reads raises a different question altogether from what I supposed he was raising by the interruption that he subjected me to a few minutes ago. In the speech I made here February 28 I pointed out, in agreement with what was said by these witnesses, that it was true that where rates on the one hand were confiscatory and on the other were extortionate, anywhere between that, rates may be considered, in a certain sense, to be reasonable.

Therefore, if fixed by legislative authority, they can not be reviewed by the court, unless we confer on the court express power to do so. That is what I contended for.

Now that I am on that point, I will say there is a difference of opinion between lawyers as to it, and I do not remember what this witness or that witness or another witness may have said on that particular phase of the subject; but I do remember, Mr. President, that no witness testified that we could not confer upon the courts jurisdiction to entertain an independent bill to review and set aside an order the Commission had made of which the carrier wanted to make complaint or of which the shipper or the community desired to make complaint on the ground that the order was not in conformity with the standard we create.

Mr. LONG. So far as I know, no one contends that we could not confer such jurisdiction on the courts. I believe that the courts have such authority now, without any special statutory provision.

Referring to Mr. Hines's statement before the committee, which, the Senator says, was only upon the question as to whether an appeal could be taken from the Commission to a court, I wish to call his attention to this statement of Mr. Hines in the hearings:

If you get an order from a commission making a rate, no matter how you word the power of the judicial review—

Not the appeal—I call the attention of the Senator to this—but the judicial review—

the court is not going into those facts any further than is necessary to protect the carrier from confiscation, in my judgment. So, no matter how much right you might have theoretically to do that, the matter is going to be left practically with the Commission, unless it palpably abuses its discretion.

Mr. FORAKER. Mr. President, as I have already said upon that phase of the general question, there was and is a differ-

ence of opinion among the lawyers, and I would not pretend to say what this lawyer said or that lawyer said who appeared and testified before the committee. I happen to know that some of the lawyers, and among them Mr. Hines, I think, have changed their opinion upon some of the points they discussed since they testified before the committee. That is only natural. Men are called before committees; they are cross-examined, questions are brought suddenly before them, which perhaps they have not carefully considered, and they make the best answers they can under the circumstances. It is not strange that now and then a lawyer who appears before a Senate committee should make statements there which, upon reflection and further investigation, he might wish to modify or change.

But, however that matter may be, Mr. President, I do not want to be diverted from the point I want to make. Down to the time I mentioned, nobody ever thought of such a thing as not providing in any bill presented to the Senate or to any committee of the Senate for a court review and full authority for the court to suspend by interlocutory injunction an order of the Commission pending the hearing of that review. I mean a review in an independent action. Suddenly, however, there came the bill of the Senator from Iowa, and I think that was the first one, that omitted the broad court review. I am not certain about that; but, if I am in error, the Senator is present and he can correct me.

Mr. DOLLIVER. If the Senator will permit me, I will say that there is no sense in which that bill omitted the court review. It provided that the orders should continue in effect unless they were vacated by the court. It provided a venue in the circuit court of the United States for the hearing of these independent proceedings in equity; and, while doubt has been thrown around the legal sufficiency of these provisions, I have never maintained, and no other friend of the bill has ever maintained, that there is absent from that bill, or from the House bill, an adequate facility for entering into the court to have determined any right which the carrier affected by the order has a right to have adjudicated.

Mr. FORAKER. Well, Mr. President, I will not have any controversy with the Senator about that concerning which we are talking. In the Senator's bill as it was originally introduced, if my recollection serves me correctly, it was provided in the restrictive review, if I may employ that term in a sense which is a correct one, that the question to be passed upon by the court was as to the lawfulness of the order made; but in this bill which we have under consideration, and in this bill for the first time, appears the provision that the question to be reviewed by the court is whether the order was regularly made—  
not fully made, but regularly made.

Mr. DOLLIVER. I dislike very much to interrupt the Senator's discourse, but the matters to which he has just referred have absolutely nothing to do with the independent action of the carrier going into courts for the purpose of denouncing an order of the Commission as unlawful or unconstitutional. The Senator is referring to the Hepburn section which authorizes the action on the part of the Commission to bring suit in equity to enforce its order.



Mr. FORAKER. If the Senator be right about that, Mr. President, then he has conclusively established what I was contending for, that there was omitted from his bill what was in the Interstate Commerce Commission's bill, which is the provision that the carrier, or anybody else interested, may go into court in an independent action as a complainant and have a review. There is no such thing as that in the Senator's bill; there is no such thing as that in this Hepburn bill, and until this Hepburn bill came before the House of Representatives, it never was in any bill—I mean the omission of a review of that kind—so far as I have any recollection.

Mr. DOLLIVER. Mr. President, one of my main troubles has been, as the Senator from Ohio knows, to get anybody to read my bill or the House bill.

If there is no provision made in the Hepburn bill for a review in the courts, what does the bill mean when it says that the orders of the Commission shall remain in effect unless the court suspends or vacates them? What does it mean when it deliberately provides for a venue and trial of suits brought by the carriers affected by those orders? That is a favorite method of conferring jurisdiction—to provide a venue.

Mr. FORAKER. Mr. President, the Senator does not misunderstand what I am talking about. I am talking about the fact that there is not in this bill any conferring of power upon any court to entertain any such independent review proceedings as I have been discussing. There is no such provision in the Senator's bill as is found in the Interstate Commerce Commission bill. That was left out. Why was it left out? The Senator knows why it was left out.

Mr. DOLLIVER. I know, and I think I ought to be permitted to state.

Mr. FORAKER. I should be glad to have the Senator do so.

Mr. DOLLIVER. It was left out for the reason that it was surplusage. The jurisdiction of the courts of the United States to attack the legal validity of an act of Congress does not depend upon any affirmative conferring of power in the act, but the jurisdiction of the court is independent of our action here. The provision was left out because it was obvious that that jurisdiction could not be disturbed by an act of Congress. So far as I am personally concerned, I left it out because I wanted to preserve unimpaired the power which from time immemorial the courts have exercised in dealing with acts of Congress.

Mr. FORAKER. Mr. President, the Senator does not quite come to the real reason why it was left out. I will state the real reason, and the Senator knows when I state it that I am stating the exact truth. Although I was not at any of these conferences, I know what was done at some of them upon as good authority as I would have if the Senator himself should tell me. It was left out because it was pointed out when the Interstate Commerce Commissioners' bill was presented to the Interstate Commerce Committee, that by that bill, as by every other of the fifty bills, perhaps, that had been up to that time introduced, there would have to be, if it should be enacted into law, two trials to which the shipper would have to be subjected. He would have to have a trial before the Commission, and then he would have to go into court and have another trial.



Nobody ever before questioned but that that would be the right of the carrier or the right of the shipper or the right of the community, and everybody felt that to subject a shipper to two trials was wrong if there was any way to avoid it—to a trial before the Commission and a trial before the court—and that we should have only one, and it should be a full and fair trial and a final trial, except subject to appeal. But nobody up until that time ever thought of such a thing as shutting the court-house door against anybody. Everybody supposed, as a matter of course, that was a right inalienable, and there was no American citizen who could be deprived of it; and that, Mr. President, in all these proceedings, whether you commence them before a commission or not, they must sooner or later get into the court to have that hearing. So it was thought by some of us on the committee, who were just as anxious as the Senator from Iowa was, and as others of his colleagues are, to find a remedy for the evils complained of, that the duty was incumbent upon us to find a remedy that would not subject the shipper to more than one such hearing, and that if he was to have one anyhow, and one must be had in the courts anyhow, it ought to be there in the first instance.

That is why I brought in the bill I introduced here, Senate bill 285, providing that the Commission should be restricted in its powers to those which properly belong to an executive board—to executive powers; that it should discharge only administrative duties, and that when it came to a determination of these rights, to the end that there might be only one hearing, it should be, in the first instance, in that tribunal to which it must go in any event. So it provided that the Commission instead of acting in the first place as a prosecutor, then as a judge, and then as a legislator, should act simply as an executive board should act, and discharge only executive duties; it should hear complaints, and if a complaint when heard was of such a character that it could by the exercise of its powers of conciliation bring the parties together, it should exercise its powers of conciliation; but if it found on trial that the carrier would not desist from that of which the shipper complained, then it should be the duty of this Commission, not to sit for a full and final hearing running through a period of time ranging anywhere from one year to two, three, or four years before it could reach the point of making an order, but that it should immediately, if it thought there was probable ground for the complaint, send it to the court, where by necessity it must go anyhow, and where, having been sent, it was the duty of the court to proceed immediately, the district attorney having filed a complaint in the name of the United States Government, and give a full and final hearing, subject to appeal to the Supreme Court.

That seems simple. It was such a saving of expense to the shipper and such an advantage to the shipper over every other plan presented; it was such an advantage to all concerned to have but one hearing instead of two and to have it in the court, where of necessity he must have one anyhow, that at once there was a different topic taken up for consideration, and that was whether or not they could so frame it as to prevent any review by the courts of the work of the Commission. Then it was, when that matter was thus pressed upon our friends, that they omitted for the first time from the bills they introduced a provision for this broad and generous, and properly generous,

court review, which the Interstate Commerce Commissioners placed in their bill.

Mr. SPOONER. And providing for due process.

Mr. FORAKER. And providing for due process, as the Senator from Wisconsin well suggests.

Mr. President, it is getting late. I did not expect to detain the Senate so long, but I did want to call attention at this stage of the discussion to the fact that, so far as a court review is concerned and so far as a restraining order is concerned, the Interstate Commerce Commission has stood uniformly down until this very last utterance, which is its most formal utterance—the bill it framed and sent to us—for both court review and interlocutory restraining order when the court thought it wise and just that such an order should issue.

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*May 4, 1906.*

Mr. LODGE. I desire to offer an amendment to the first line of the first section, at the end of the line. I desire to offer the draft which appears on page 5, not the one which appears on page 1 of the bound amendments. I do not know why the one on page 5 was misplaced, because it should come immediately after the first one. I desire to make two slight modifications in that amendment, which I send to the desk and ask to have read.

The VICE-PRESIDENT. The Secretary will read the proposed amendment as modified by the Senator from Massachusetts.

The SECRETARY. In section 1, line 1, after the word "to," at the end of the line, it is proposed to insert:

Any corporation or any person or persons engaged in the transportation of oil or other commodity, except natural gas or water for municipal purposes, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act, and to.

Mr. FORAKER. Mr. President, I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amendment ought to be further amended, so as to provide that it shall apply only to pipe lines operated for the public. I do not understand how you would compel a man who has a private pipe line of his own to become a common carrier. We have a right to regulate common carriers who are engaged in interstate commerce, because they are instrumentalities of commerce; but if a man living on one side of a boundary line of a State sees fit to have a private line of his own, which passes into another State, it does not seem to me that we could compel him to throw that open to the public use. I want to illustrate what I mean. The Senator from Massachusetts [Mr. LODGE], upon my suggestion, has inserted some words in his amendment in regard to natural gas. I live in the city of Cincinnati—

Mr. LODGE. If the Senator will allow me, the exception applies to natural gas or water for municipal purposes.

Mr. FORAKER. I know; but I wanted to call the Senator's attention to how it would operate if the amendment were not so amended. At Cincinnati the gas company—not the city, but the gas company—has secured, under the laws of Ohio, an

amendment to its charter authorizing it to acquire and distribute natural gas as a substitute for artificial gas, and authorizing it in that behalf, under the statute of Ohio, to lay, maintain, and operate the necessary pipes to transport that natural gas from a point outside the State of Ohio to the point where the natural gas is to be distributed. They are about to spend, I think, nearly \$5,000,000 in that behalf to build a pipe line 274 miles long, from Cincinnati into West Virginia, where they will find a sufficient quantity, as they understand, of natural gas. They are taking upon themselves the burden of that investment; they are spending a large amount of money, or will be when they once commence to expend it; they have to raise that sum, and they have increased the capital stock so as to enable them to do it, and are laboring right now to raise that amount of money for that purpose, so that the people of Cincinnati can have natural gas. It is not to be brought there for the municipality, except in the sense that the corporation which has a right to supply gas to that city is acquiring it in order that it may supply it at a price agreed upon between the company and the consumers of gas.

That is not all. I did not think to tell the Senator when I was in consultation with him yesterday that for years the gas company located in the city of Cincinnati has been supplying gas to the cities opposite Cincinnati, on the Kentucky side of the river—Newport, Covington, Ludlow, Dayton, and Bellevue, five cities in all. They pipe that gas across the river and turn it into the pipes of the five cities on the other side, in that way supplying that people. Just at this time it is my impression that that contract is not in operation, because of some arrangement they have made, but it illustrates what is involved here. That is a purely private matter; they are not piping gas for the public, and it seems to me that they ought not to be put under this proposed law. We have no right to put them under it. I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private pipe lines that an individual or a single corporation may have laid down and put into operation for its own benefit. I do not want to press it, but I desire to call attention to it.

Mr. MALLORY. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Florida?

Mr. FORAKER. Certainly.

Mr. MALLORY. I should like to inquire of the Senator from Ohio if he can say whether the pipe lines to which he refers act on the theory of being public servants, to condemn property under the right of eminent domain?

Mr. FORAKER. As I stated, the company is proposing to put in this natural-gas pipe line to Cincinnati from up in West Virginia, passing through a portion of Kentucky, as well as Ohio and West Virginia. It is authorized under its charter, by an amendment to the charter, and authorized by the laws of Ohio to construct, maintain, and operate a pipe line for the transportation of oil, natural gas, or water, as the case may be. They are not interested in oil in any way, but they are interested in natural gas. I think it is all right to make any pipe

line that is a common carrier subject to the law. I believe every common carrier engaged in carriage for interstate commerce should be subject to this law.

Mr. MALLORY. I did not understand the Senator to answer the question exactly as I put it, which is, Do they exercise a right of eminent domain on the theory of being public servants?

Mr. FORAKER. They do. They are allowed to exercise the power of eminent domain, and they are, by the terms of the statute, called "common carriers" for that reason. They are supposed to be wholly within the State of Ohio, I suppose, so far as the statute contemplates, but a pipe line of that kind is not contemplated to be used as a common carrier, but simply for a specific private individual purpose in the sense that it belongs only to one company.

Mr. SCOTT. Will the Senator allow me to interrupt him a moment?

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from West Virginia?

Mr. FORAKER. Certainly.

Mr. SCOTT. The Senator probably is aware that they are carrying gas now from West Virginia to the cities of Cleveland and Toledo, Ohio.

Mr. FORAKER. Yes.

Mr. SCOTT. They have a pipe line under the Ohio River, and with that same pipe line they are supplying my city and the factory of which I am president. I should like this amendment of the Senator from Massachusetts to go over until we get it in proper shape, so that we will not find we are tied up by something that we do not want.

Mr. FORAKER. I do not want it to go over if we can agree upon it now. I do not understand why the Senator should object to putting in the words "carrying for the public," if a party be not engaged in carrying for the public, but only in carrying his own.

I want to say further, in answer to the Senator from Florida, if he will give me his attention, that it is not necessary in Ohio under the Ohio statute to become an incorporated company under the statute in order to put down, maintain, and operate a pipe line for the transportation of oil or gas or water. If you see fit to incorporate under that statute and have the power of eminent domain conferred upon you, you are called a "common carrier;" but any person—and this amendment applies to persons as well as corporations—may put down, and corporations so authorized may put down, pipe, and maintain and operate it for transportation of oil or gas or water.

Mr. MALLORY. Well, Mr. President, it occurs to me that the true test is whether they have the right to exercise the power of eminent domain. If they have, it is because they are performing a public service. If they have not, they ought not to have the right. Now, if they do exercise that right, it seems to me it is a proper subject for us to deal with.

Mr. FORAKER. I do not know whether they will get the right of way by the exercise of the power of eminent domain or by private contract. They will, perhaps, get it by exercising the right of eminent domain in some instances and in others by agreement.



Mr. McCUMBER. I should like to ask the Senator from Ohio whether any of these companies are carrying gas or oil other than that which they themselves manufacture—whether they are common carriers in any respect?

Mr. FORAKER. I do not think they are. But I do not regard myself as good authority on that subject. I know but little about it except in a general way. I know some years ago there were discovered natural-gas fields in Ohio, and we have been piping the gas around to various cities in the State; and I know that recently, within the past four or five months, the gas and electric company of Cincinnati had its charter amended so as to authorize it to go to the natural-gas fields in West Virginia, by putting in a pipe line of this kind, and bring the gas to Cincinnati, and substitute it for the artificial gas which they are now supplying.

Mr. McCUMBER. I hope the Senator will explain the necessity of making a public matter out of these concerns, which are purely for private use. I do not understand the necessity of bringing them under the provisions of this proposed law. If they are carrying for the public, of course there would be some necessity of making them subject to it.

Mr. FULTON. I ask the Senator from North Dakota whether a pipe line has the right to exercise the power of eminent domain, and if it does exercise that right, why should it not be held to be exercising the right of a public carrier?

Mr. McCUMBER. Whatever right it gets to exercise the power of eminent domain is a right obtained from the State and not from Federal authority in any respect. But even if it be granted that you may consider that the law gives them the right to condemn land for their particular purpose, that of itself does not make them a public carrier unless in the law or in their articles of incorporation there is something authorizing them to carry for the public.

Mr. FULTON. Can they obtain the right to exercise the power of eminent domain unless they are engaged in a public purpose?

Mr. McCUMBER. That will be determined by the laws of the State. That is not the real question. The question is whether any of them are engaged as public carriers of particular commodities. If they are, I concede that they ought to be brought under the provisions of this particular law. If they are not, I can not see the necessity of bringing them under the provisions of the law. I do not understand that under the rule we can lay this amendment over. Under the general consent it must be voted upon at the close of the argument. I am therefore doubly desirous that the Senator from Massachusetts should make that matter clear.

Mr. TILLMAN. I should like to ask the Senator from North Dakota a question.

Mr. McCUMBER. Certainly.

Mr. TILLMAN. I understood him to ask a moment ago whether the charters of these corporations made them public carriers. I do not imagine that any public carrier in the United States has a Federal charter except the transcontinental railroads. They all get their charters from the States, and they all get the right to exercise the power of eminent domain in that way. I think the test is whether they are engaged in interstate



commerce—whether the commodity they are transporting would come under the rule of interstate commerce, which we are allowed to regulate. That is my idea of the test of this whole question.

Mr. McCUMBER. If they are carrying their own goods and no goods of the public, how is the public interested one way or the other in the matter of their carrying their own goods through their own pipe line from one State to another?

Mr. TILLMAN. Let me answer the Senator from North Dakota in this way: Take West Virginia, whence, I believe, comes the gas in the case mentioned by the Senator from Ohio. Of course that gas is not going down yonder three or four hundred miles without pressure, and therefore it comes from the surrounding country where originally tapped, and the gas company which has bored its wells may be robbing the land-owners around it of their gas, because it has great capital and the facilities for sending it off and selling it, while the land-owner, who is not able to pipe it to the market, is not allowed to pipe it through the established pipe line, because Congress will not help him. That is my conception of a just and proper reason—

Mr. McCUMBER. I can not understand how Congress can either help him or can interfere with him in any way.

Mr. TILLMAN. Mr. President, let us have order, please.

The VICE-PRESIDENT. The Senate will be in order.

Mr. McCUMBER. All the rights the Senator has spoken of and all the remedies he might seek under that condition of affairs would be in the State in which the wells are located.

Mr. TILLMAN. But this man is stealing my gas, because he has a hole in the ground connected with a pipe which carries it to market, and I can not get any connection with this same pipe because you do not put it under the control of the interstate-commerce clause.

Mr. McCUMBER. The Senator does not contend that we can punish a man for stealing gas in West Virginia or any other State?

Mr. TILLMAN. I am not talking about punishment. But why should not this other fellow be permitted to get some of the benefits of the blessings which God Almighty has furnished him under the ground by connecting with the pipe line, an interstate line, and be able to sell his gas, by paying for the privilege?

Mr. McCUMBER. He can. The courts of the particular State, acting in conformity with the rules of God Almighty that the Senator speaks of, can grant an injunction to prevent anyone from stealing the gas.

Mr. TILLMAN. You can not prove that he is stealing the gas. Yet you know it. He might get out of a given field all the gas the pressure has driven to the opening. The Senator is arguing for a monopoly, probably, without knowing it, though I know.

Mr. McCUMBER. If I am, it is certainly without knowing it.

Mr. TILLMAN. I do not accuse him of that, for he is too acute minded, but he does not realize and understand that this gas line, going from West Virginia into Ohio, is transporting an article of interstate commerce, to be sold there to the general public and to the municipalities and others. I am willing and

want to vote for this amendment, because I contend that a neighboring landowner, who has gas under his land and can bore a well to it, but is not able to build a pipe line three or five hundred miles, ought to be allowed to tap the established line, paying for the privilege of selling his gas.

Mr. FORAKER. Allow me to say to the Senator from South Carolina that he suggests there a very important principle. I do not think anything has come up in the course of this debate which demands our attention more imperatively than the abuse which has resulted from the railroads being engaged in acquiring and owning coal mines and operating them and engaging in the business of handling coal. I think it is a matter of common agreement, something that we all agree to here, that that abuse should be remedied, and the common carrier should be a common carrier and nothing else. That is true not only as to railroads with respect to coal, but with respect to everything else, and it is equally important, so far as principle is concerned, with respect to pipe lines.

Mr. McCUMBER. Provided they are common carriers.

Mr. FORAKER. The point I want to make is this: According to the Senator's suggestion we would make them common carriers by compelling the company that owns the trunk line which has been built, we will say, from Cincinnati to the natural gas fields of West Virginia, to buy all the gas brought to it in West Virginia and transport it, in order that the men there should have the benefit that the Almighty has provided, without expending the \$5,000,000 necessary to make the Almighty's benefaction available. That is to drive us into the very thing that the Senator has with great effectiveness urged against, as an abuse of railroads engaging in business.

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The VICE-PRESIDENT. The Secretary will again state the amendment of the Senator from Massachusetts as it will read if the amendment proposed by the Senator from Ohio is agreed to.

The SECRETARY. In section 1, line 1, after the word "to" at the end of the line, insert the words:

Any corporation or any person or persons engaged in the transportation of oil or other commodity, except natural gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, at any place within the jurisdiction or within the governmental authority of the United States, who shall be considered and be held to be common carriers within the meaning and purpose of this act, and to.

Mr. BEVERIDGE. If the Senator from Ohio, who offers this amendment, will, after "gas," include the words "for municipal purposes," for one I should be very glad indeed to vote for it.

Mr. LODGE. That is the way it stood.

Mr. BEVERIDGE. I know that is the way it originally stood, but is not the way it stands as the Senate is going to vote on it.

Mr. LODGE. His very purpose is to get rid of those words.

Mr. FORAKER. I do not want it restricted to municipal purposes.

Mr. BEVERIDGE. Then, unless the Senator from Massachusetts or some other Senator can show me why natural gas should not be included under the provisions of this bill as well as oil, when both are carried in pipe lines and are interstate commerce, I shall have to vote against it.

Mr. FORAKER. I do not know that I am in order, but it is my amendment. I have just offered it. I suppose I am. I have already explained to the Senate that it so happens that just at this time they are building or getting ready to build—the ordinances have already been passed—a pipe line from Cincinnati to the natural gas fields of West Virginia, a distance of almost 300 miles. It will cost about \$5,000,000. The purpose is to bring natural gas to the city of Cincinnati and substitute it there for artificial gas. It is to be distributed throughout the city. It is to be used not only for illuminating the streets, which would be a municipal purpose, but it is also to be furnished to manufacturers, and that is one of its principal purposes.

Now, nobody is interested in that enterprise, except only the people who are building the line with the idea of bringing the gas to Cincinnati, to do a great public service, and they have had trouble enough to set the enterprise on foot. They are just now in the midst of their trouble, trying to raise the money. They have not yet been able to raise it all. If it should go out, after they have raised the money to build the line, that any man can take possession of it to bring gas there for his own purposes, and that the line is to be under the charge of the Interstate Commerce Commission, I think it will be the end of the enterprise. That is my notion of it.

I should like to have natural gas excepted. I have no other interest in the matter. I do not care what you do about oil or water, although perhaps I ought to object to the provision about transporting water from one State to another, because the truth is we, at Cincinnati, get our water, under the new waterworks arrangement, from the Kentucky side of the river, over, as the Senator from Kentucky well knows, on the sand bar opposite Dayton, on the Kentucky side. We go across there by permission of Kentucky, and we take our water from there, it being purer water than we can get on the other side. Now we are to be put under the Interstate Commerce Commission. It is simply carrying this thing to a ridiculous extreme. I do not know of anybody complaining about the transportation of water from Kentucky to Cincinnati or the transportation of natural gas from West Virginia to Ohio to light our cities. I have never heard any complaint. I hope the amendment will be adopted.

Mr. TILLMAN. I should like to ask the Senator why the courts would not be open to the pipe line to compel a fair remuneration or a reasonable and just rate or a justly compensatory rate, or something like that, in the event that the Interstate Commerce Commission should undertake to oppress this corporation?

Mr. FORAKER. I do not know how the Interstate Commerce Commission can make us become a common carrier if we do not want to be. We are not building this pipe line with the idea of accommodating the people who have natural gas to sell, except only as we buy it from them ourselves. Our people are going there; they are acquiring natural-gas territory; they are opening up their own wells; they are supplying themselves therefrom; and it may be they will want to buy some gas, but they will buy it as their own. There is no other customer there except only this one company, which will own the pipe line. It is not our purpose to engage in the business of a common car-

rier, and I do not think we ought to be treated as a common carrier when we are not.

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So Mr. LODGE's amendment as amended was agreed to.

Mr. FORAKER. I move to amend by striking out the words "receipt, delivery, elevation, and," on page 3, line 7. I call attention to the fact that on page 3 the term "transportation" is defined, and the term "transportation" is defined to include the receipt, delivery, and elevation of goods transported in interstate commerce. The conclusion of that paragraph is that common carriers are required to furnish such transportation. In other words, common carriers are required to provide for the receipt of goods to be transported and for the delivery of goods after they have been transported, which, if it means anything at all, means delivery to the consignee at the place of consignment. They are required also to provide for the elevation of goods, which means, I suppose, to provide an elevator service. It seems to me those words are not necessary to the accomplishment of the purposes we have in view, and that they are only included to bring confusion, and it ought all to go out. I do not want to discuss it. I submit the amendment.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 3, line 7, strike out the words "receipt, delivery, elevation, and."

Mr. DOLLIVER. Mr. President, I regret that I am not quite able to agree with the Senator from Ohio in respect to this matter. One of the common abuses of interstate transportation is extortionate charges and discriminations in connection with the receipt and delivery and especially with the elevation of grain and such merchandise.

The theory of this definition of transportation is that whoever buys it buys all that there is connected with it. If a man desires grain sent from the interior to Chicago or New York, which requires special expenses for transfer and elevation and delivery at an intermediate point, such as Omaha, the object of this bill is that all the expenses incident to the interstate transit of the merchandise shall be included in the transportation, and the total price of it computed in the rate.

If these words are omitted, room is left for some of the most flagrant extortions and the most flagrant discriminations, especially in relation to the elevation of merchandise in transit. I should therefore hope that that amendment would not prevail.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Ohio.

Mr. BAILEY. Let the amendment be read.

The VICE-PRESIDENT. The amendment will be again read at the request of the Senator from Texas.

The SECRETARY. On page 3, line 7, strike out the words "receipt, delivery, elevation, and."

The amendment was rejected.

Mr. FORAKER. I understand that we are working in accordance with the printed amendments in their order at the Secretary's desk.

The VICE-PRESIDENT. The amendments are considered only as they are offered from the floor.

Mr. FORAKER. Then I offer another amendment to section 1. I move to amend on page 3, line 8, by striking out the words "ventilation, refrigeration, or icing;" and I send to the desk



to be read as the only remarks I care to make about it, for I do not suppose anybody's remarks will do any good, a letter addressed to a Member of the House of Representatives from the State of Michigan, furnished me by the Senator from Michigan [Mr. ALGER]. It expresses the whole case, except that I want to say I have a great number of such letters from growers of peaches in Michigan, and a great number of letters from my own constituents in Ohio who are interested in the growing of peaches in northern Georgia, all writing to me to the same effect; but I ask that that letter may be read as a sample of all.

The VICE-PRESIDENT. The amendment submitted by the Senator from Ohio will be stated.

The SECRETARY. On page 3, line 8, it is proposed to strike out "ventilation, refrigeration, or icing."

The VICE-PRESIDENT. The letter sent to the desk by the Senator from Ohio will be read.

The Secretary read as follows:

HART, MICH., *December 15, 1905.*

Hon. ROSWELL P. BISHOP, M. C.,

*Washington, D. C.*

DEAR SIR: We, the undersigned fruit growers and shippers of Oceana County, Mich., desire to call your attention to a phase of the proposed legislation relating to railroad rates, etc., now before Congress at Washington, which keenly affects our interests.

As we understand the situation, practically all the bills now pending at Washington contain provisions that will put the so-called "private car lines" out of business. Such legislation, we believe, would be a serious blow to the fruit-growing interests of this county and State.

Our experience proves that car service, refrigeration service, and inspection service, like we have had in the past from the Armour car lines, is essential to the development and prosperity of Michigan fruit growing. Since we have had the Armour service our business has prospered. If we are deprived of that service, we have nothing to expect but a return to old conditions. Every progressive fruit grower hates to think of that. Briefly stated, the situation that confronts us is this:

In the days before we had Armour service in this district our market was confined almost exclusively to Chicago and Milwaukee. Those markets were and still are to the grower low-priced markets. We had to ship our fruit to those markets on consignment to commission men, and we were at their mercy. We had to take for our fruit whatever the commission man in his generosity might allow us. He could and often did report our consignments as arriving in bad condition and selling for barely enough, sometimes not enough, to cover freight charges. We had no redress.

Since we have had the Armour service we have become independent of the Chicago and Milwaukee commission men. We have the whole country for a market. We can send our peaches to the best markets. If we ship on consignment, the Armour service is a guaranty that our fruit will arrive at destination in good condition, and no commission man can cheat us with a report of bad condition.

But, still more important to us, with the Armour service we do not have to ship on consignment. The advantages and guaranties of that service operate to bring into our districts buyers from far distant markets—such as New York, Boston, Philadelphia, Baltimore, and so on—and we sell to those buyers for cash on track at our shipping point. This, as you will appreciate, is a great advantage to us. It relieves us of risk, and the competitive buying brings us better prices; or, to state the case in another way, the Armour service has compelled the commission man to become a merchant instead of a broker and has made him do business on his own money instead of ours. It has also made fruit growing a stable business instead of a gamble.

As we understand it, practically all of the opposition to the private car lines comes from commission men. From what we have stated you will readily appreciate and understand why a certain stripe of commission men are sure to be arrayed against the private car lines.

As to the complaint against rates for refrigeration and service on these private fruit cars, our position is simply this: We are willing



to pay for service when the service enables us, as it does, to get enough more for our fruit to cover that charge and make an additional profit larger than we could get without the private car line service.

As to the proposition that the railroads should be required to furnish this refrigerator service, we must say we doubt the practicability of that plan. Leaving out of consideration the millions of money that fruit-belt roads would have to spend for fruit cars and also leaving out of consideration the disposition of those roads to provide enough cars for the fruit season and have them idle the rest of the year, our experience suggests these points:

The private car lines have an organization of picked men, trained to the business of looking after perishable fruit business, both at the shipping point and en route. It guarantees condition. It permits the shipper to ship to any point and over any road, and no matter whose road or how many roads the shipment goes over, the private car taking care of it all the way and responsible for it.

If the railroads undertake this refrigeration service, it will require a long time for them to perfect any sort of an organization. But even if a fruit-belt road should perfect such an organization we do not see how that road can guarantee us perfect service and care of our fruit after it leaves that road and goes over a road that handles coal or lumber principally, and probably never handles a car of fruit except what comes to it in transit from some other road. "Everybody's business is nobody's business." The Armour car lines give us a highly organized, specialized service and is expert in handling highly perishable commodities. We can not look for such service from ordinary train or yard crews.

This whole question and its sharp bearing upon us is illustrated by our local railroad situation. At the end of the past season the Armour car line service on the Pere Marquette Railway ceased, and that road agreed to provide the refrigerator service heretofore performed by the Armour car lines. Our experience with the Pere Marquette Railway has not made us enthusiastic believers in its ability to furnish service equally as good as that of the Armour car lines, as we are reliably informed the initial cost to the Pere Marquette Railway for car equipment would be at least two and a quarter millions of dollars.

But the Pere Marquette Railway is now in the hands of a receiver. Therefore its ability to fill the place of the Armour service before the next peach crop is gathered would seem to be out of the question.

You certainly appreciate where all this leaves us. With the Pere Marquette Railway tied up in a receivership, and legislation at Washington knocking out private car lines, will set us back ten years in our fruit industry; it will leave us without refrigerator cars for the coming season, except what the Pere Marquette Railway can borrow, will leave us without the help of an organized service, and will inflict serious damage to every peach or fruit grower in the Michigan district.

We have taken the liberty of thus addressing you at length on this question not only because our interests are affected, but because our interests can be regarded in this matter without injury to any other interests. There is no industry worth mentioning in Oceana County, in this Congressional district, or in this State that will be benefited by knocking out private fruit-car lines, but such legislation will irreparably damage the fruit industry.

We earnestly hope you will be able to give our interests in this matter your careful consideration, and hope you can conveniently call it to the attention of your colleagues.

If you desire information more in detail on the questions involved, any one of the undersigned will cheerfully furnish it.

Yours, respectfully,

E. R. Hubbard, F. L. Cerbin, D. Burns Hutchins, W. E. Snyder, A. A. Husted, J. K. Flood, Benton Gebhardt, T. S. Gurney, L. L. Shigley, Geo. A. Hawley, F. W. Van Wickle, of Hart, Mich.; F. E. Llewellyn and C. A. Sessions, of Shelby, Mich.; John Hanover and J. B. Conger, of New Era, Mich.; C. W. Tollant, I. W. Loomis, C. F. Hale, A. G. Saunders, C. E. Ellis, Wylie Bros., of Shelby, Mich.

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May 7, 1906.

Mr. FORAKER. I offer the amendment which I send to the desk, to be added at the end of section 1.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. At the end of the first section it is proposed to add the following:

That no carrier engaged in interstate commerce shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person a greater or less compensation for interstate transportation of passengers than it charges, demands, collects, or receives from any other person for the same or equally good accommodations and a like and equally good service. And any carrier violating this provision shall be deemed guilty of unjust discrimination and shall for each offense pay to the United States a penalty of not less than one hundred nor more than two thousand dollars: *Provided*, That nothing herein shall prevent the free carriage of destitute or indigent persons, or the issuance of mileage or excursion passenger tickets, or prevent such carriers from giving free or reduced transportation to ministers of religion, or to the inmates of hospitals, eleemosynary and charitable institutions, or to prevent any such carrier from giving free transportation to officers, agents, employees, attorneys, stockholders, or directors of carrier companies, or to the families of the same.

\* \* \* \* \*

Mr. FORAKER. The man who pays \$10 to ride from A to B, no matter what his color may be, is entitled to the same kind of accommodations and the same kind of service that any other man is who pays \$10.

Mr. McCUMBER. I agree with the Senator. He is entitled to the same accommodations.

Mr. FORAKER. That any other man is who pays the same sum.

Mr. GALLINGER. Mr. President. I wish to make a suggestion in the line of the suggestion made by the Senator from North Dakota in reference to the influx of men into the harvest fields of the West at certain seasons of the year. In my part of the country we have workmen's trains, and the workmen, at certain hours of the day, are carried at a less rate than the ordinary passenger. While I have not examined this amendment so as to satisfy myself entirely that it would interfere with that arrangement, I wish to suggest in this debate that if it does so interfere, it will be a very great hardship that ought not to be imposed upon the workmen of the country.

Mr. McCUMBER. There can be no possible doubt that it does.

Mr. LA FOLLETTE. Mr. President—

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from Wisconsin?

Mr. McCUMBER. Certainly.

Mr. FORAKER. If the Senator will allow me, I was occupied in answering a question and I did not hear what the Senator from New Hampshire said.

Mr. GALLINGER. I will say to the Senator that I suggested that in certain sections of the country, New England notably, we have trains for workmen, and the workmen are carried during certain hours of the day at a less rate than is the ordinary passenger; and that if the amendment in any way interferes with this arrangement it would be a very great hardship to the workmen of New England and ought not to be put in the bill.

Mr. FORAKER. I do not want to interfere with that arrangement, and I suppose the issuance of mileage or excursion tickets would cover that. If the Senator thinks differently, I will be very glad to consider any amendment he may suggest.

\* \* \* \* \*

Mr. NELSON. Mr. President, I desire to call the attention of the Senate to the vice of the amendment of the Senator from Ohio. It has not been really touched upon by the Senator from South Dakota or anyone else in this discussion. If you will read the first of the amendment you will see that it confounds interstate and local traffic, and it amounts to this: That a carrier can charge neither more nor less for an interstate rate of passengers than it can for the local rate. In line 4 you will find, commencing in line 1, that—

No carrier engaged in interstate commerce shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person a greater or less compensation for interstate transportation of passengers than it charges, demands, collects, or receives from any other person for a like and equally good service.

Now, taking that whole proposition together it amounts to this: That they can not charge more for passengers carried as interstate passengers than they can charge for passengers carried at local rates. Whatever local rate is paid, for instance, in the State of Minnesota by passengers, that same rate must be charged for passengers going from Minnesota to New York.

We all know, as a matter of fact, that for long distances railroads charge much lower rates than they do for mere local rates. This is, in fact, putting the two on a par, so that the railroads can charge absolutely as much for interstate traffic as for local traffic, and indirectly it reduces it to a mileage basis, because it is proposed to say, "If you charge only 3 cents a mile for local passenger rates, you can not charge any less than 3 cents a mile for interstate passenger rates," and that is the whole milk in the cocoanut. I do not care about taking up more of the time of the Senate. Anyone who will inspect the amendment will see that it has that effect.

Mr. FORAKER. Will the Senator allow me to interrupt him?

Mr. NELSON. Certainly.

Mr. FORAKER. If I understand the Senator correctly, his point is one that never occurred to me in connection with my amendment. I should like to have him suggest what words would change that.

Mr. NELSON. The very best way is to leave the amendment out.

Mr. FORAKER. We can find plenty of people who are willing to leave out all provision about prohibiting passes, but in some form or other we will have it presented, so that there will be a vote on it any way.

Mr. NELSON. This amendment does not relate to passes at all. That is a distinct question. What I insist is that it puts interstate passenger rates and local passenger rates on exactly the same level, on practically a mileage basis, by which the railroads can charge just as much for the long transportation from St. Paul to New York as they do from St. Paul to my own home 140 miles from St. Paul. It is putting the two rates on an exact level.

Mr. FORAKER. Mr. President, the language employed, if I may address the Senate at this time, does not admit of any such construction, in my judgment. What the Senator has discovered is entirely new. I am sure it has not occurred to any other member of this body. I have not heard of such a thing

being suggested before. I should like to have any man look at that language and tell me how it admits of any such construction.

The provision applies simply to interstate transportation, and it says that no person shall be charged more or charged less than every other person is charged. That language was not new with me. I copied it out of the law as it now stands in that respect. The only trouble with the law as it now stands, and this is the law as it now stands precisely in that particular, is that it provides no penalty. Now, I have added a penalty. The law is good enough as it is already on the statute books to prohibit the giving of passes if there were only a penalty attached.

Mr. DOLLIVER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Iowa?

Mr. FORAKER. Certainly.

Mr. DOLLIVER. If I am not greatly mistaken, section 10 of the interstate-commerce act, amended March 2, 1889, provides a rather more severe penalty than the amendment proposed by the Senator from Ohio.

Mr. FORAKER. I do not know about that section. I do not know of any section which provides a penalty for this offense.

Mr. President, I had just two purposes in view in offering this amendment. One is to prohibit the granting of passes with respect to the interstate transportation of passengers. I wanted to put the language in such a form that there could not be any question about it. Then I wanted to provide a penalty that would secure its enforcement. There being no penalty, passes are granted and they have been ever since 1887, and most of us perhaps have accepted them. I have. I have used them; but I have not used any for a considerable time. That is a fault we have all, or at least most of us have, been open to criticism for. But the time has come when we ought to break up that practice. That is universally recognized. You can not break it up unless you provide a penalty, and that I have provided for. If it is not severe enough, make it more severe.

But I had another purpose in view, Mr. President. When we are not making rates, but the railroads are making them, we can stand by and see a great many things done which we can not afford to do. We can acquiesce in them; but when we undertake to make rates, when we put the Government into that business, the Government becomes responsible for the rates that are made and for the treatment of the passengers who pay those rates.

My purpose was, avoiding, if possible, all question about the so-called "Jim Crow cars," to simply put in the law a provision that there should be equal treatment of all passengers who pay the same compensation for being transported.

Mr. HOPKINS. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Illinois?

Mr. FORAKER. Certainly.

Mr. HOPKINS. I wish to suggest the condition of affairs in Chicago.

Mr. FORAKER. I do not want to lose my time.



**Mr. HOPKINS.** All right; I will wait until after the Senator concludes.

**Mr. FORAKER.** In other words, Mr. President, the man who pays a fare, who is charged, for instance, the regular fare from Washington to Richmond or to Mobile, should have precisely as good accommodations without regard to whether he is white or black as any other man who pays it. That is all there is in it. We should put in this law something on which the Commission can stand to enforce equality of treatment in the carriage of passengers, if we are to undertake to become responsible therefor.

The provision I have offered avoids all question about the right to separate passengers by having separate coaches, and the law I have provided, if it should be adopted, is less stringent in that respect than the laws of some of the Southern States. Take the State of Georgia, for instance. I have before me their statute on that subject. They provide as follows:

The different railroads in this State, acting as public carriers, are required to furnish equal accommodations to all, without regard to race, color, or previous condition.

I say nothing about race, color, or previous condition, but I do say there shall be equal treatment; and I want to know whether any man who believes in equality of treatment will vote against putting in this bill a provision to that effect, especially if it does not conflict with the laws of the different States in that respect. You can do as you like about separating, but there should be an equality of treatment so far as the facilities of travel are concerned and so far as the accommodations are concerned.

That is what I have in mind along with the prohibition of passes. When the Senator from Minnesota [Mr. NELSON] says that the milk of the cocoanut is to give to the railroads some advantage, the Senator from Minnesota speaks without any warrant whatever so far as anything in my mind was concerned. If there is anything in the language that has been employed which admits of that construction, I hope the Senator will tell me how to correct it, and I will be obliged to him.

**Mr. NELSON.** I charged the Senator with nothing at all, and he knows it. I stated what the construction of the bill was bound to be.

**Mr. FORAKER.** I did not say the Senator had charged me with anything.

**Mr. NELSON.** I do not want him to try and make a personal matter out of it. I gave him no occasion for it.

**Mr. ELKINS.** Mr. President—

**The VICE-PRESIDENT.** Does the Senator from Ohio yield to the Senator from West Virginia?

**Mr. FORAKER.** I ask the Senator to wait until I answer the Senator from Minnesota. I did not say that the Senator from Minnesota had charged me with anything; but I said, when the Senator said the milk in the cocoanut was to try to give the railroads more advantage, he spoke without warrant, so far as anything in my mind was concerned and so far as anything in the language could be construed of which I have any knowledge. If the Senator will tell me how to correct the language so as to accomplish, to his satisfaction, the purpose I have in view by prohibiting the granting of passes and



securing equality of treatment to all who travel and who pay the same for their travel I will be very greatly obliged. I am not here to higggle over language, and I have no purposes whatever, except those which I have expressed.

Mr. ELKINS. In reference to providing a penalty, in section 10, if the Senator has examined that act, he will find that provision is made for a penalty. I think that section 10, as amended by the act of March 2, 1889, provides for a penalty for everything that may be prescribed to be done or omitted to be done under any act regulating interstate commerce.

Mr. BEVERIDGE. Will the Senator read that portion of the section with reference to passes?

Mr. FORAKER. There is not a word in it about passes.

Mr. ELKINS. But the Senator in his amendment has prescribed a penalty for passes. Now, I will read section 10, if the Senator will allow me:

That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein—

Mr. FORAKER. The Senator is talking in my time. I would not care if it had any pertinency to this, but the Senator will allow me to say, respectfully, I do not think it has. It does not cover the case. I was not unmindful of that provision. I thought when the Senator from Iowa [Mr. DOLLIVER] spoke about it a moment ago he referred to something I had overlooked. I am perfectly familiar with that. It is one of those general provisions for penalty for any violation of the general act. I want to amend that special provision with respect to this subject, and the amendment I have offered fits the case, unless it is open to the suggestion made by the Senator from Minnesota. I do not see how it can be, but I have so much respect for his judgment I would be glad if he would aid me to correct the language if it needs correction.

My sole purpose is, and I think it ought to be put in here without any doubt, to further prohibit the giving of passes, except only in the excepted classes and under the conditions which were suggested by the Senator from New Hampshire, that may be prescribed by the Interstate Commerce Commission. And I think we ought to put in the bill a provision that there shall be equal treatment of all who travel and pay the same fare.

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Mr. FORAKER. I want to make some remarks in opposition to the substitute of the Senator from Texas, speaking now in my own time, in answer to that. I drew this amendment, as I have already stated, in the particular to which the Senator has referred, so as to accomplish two purposes—in the first place, to avoid if possible raising any question as to discrimination on account of color, and, in the second place, so as to afford a legal provision in this statute on which the Commission could stand to enforce equality of service and equality of treatment in the transportation of interstate passengers. I might have gone much further than I did without going as far as the statutes of the various Southern States have gone in that par-

ticular. I read a moment ago from the Georgia statute, which requires that there shall be no discrimination on account of race, color, or previous condition, using that exact language.

Mr. BACON. Will the Senator pardon me a moment? That is coupled with the provision which prohibits common carriers from carrying the two races in the same car.

Mr. FORAKER. I am going to call attention to that. That is the general provision. Now, without anything at all being said on the subject, there is no requirement in this proposed law that the passengers shall be carried in the same coach.

Mr. BACON. No.

Mr. FORAKER. There may be separate coaches provided. In certain of the States there is that statutory provision. I did not care to conflict with that. I do not either approve or disapprove it. I simply let it alone. But I do want in this law, and I think we should all be agreed about that, a provision the necessity for which has been recognized by every Southern State, that there shall be equality of treatment, not that white and black shall be put in the same coach where it is objectionable, as it is in many States, but if you have separate coaches that they shall be as these southern statutes already provide, equally good for both races.

Mr. BACON. I should like to ask the Senator a question.

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Georgia?

Mr. FORAKER. Yes; I do.

Mr. BACON. If that is the present provision in all of the Southern States, which I think practically it is, what possible good can there be in the insertion of these words? If that is the matter which the Senator has in mind, so far from there being any good in it, will not the very fact of the insertion of those words create the presumption that it was thought that there was not now provision under which this equality of treatment was required?

Mr. FORAKER. The Senator will remember that I have only fifteen minutes, although I yield to him.

Mr. BACON. I beg pardon.

Mr. FORAKER. The necessity is in this: The Interstate Commerce Commissioners can not enforce the statutes of the several States. If in any State there should be a failure to enforce the provisions of the State statutes requiring equality of service and accommodation, the Interstate Commerce Commission would have a legal warrant for doing that thing. In the State of Texas they have very carefully provided for exactly what I want to provide for here, except only I have not gone so far as they have gone in either Texas or Georgia, for in Texas they say that the coach so to be provided shall be equal in all points of comfort and convenience. I think the words "equally good service" would cover everything.

Mr. President, the question comes up to us in such a way that we can not avoid it if we are going into the business of controlling transportation directly, fixing the rates which shall be paid, prescribing the regulations and rules which shall govern in the operation of trains. It is a different attitude that we assume with respect to that matter from that which we have heretofore been standing in.

We become responsible, and if there be any ground in any case for complaint—I do not know anything about what the fact is, but I know I have read a good deal to the effect that there is such ground; I have received a great many letters to that effect—that under the provision of law that they shall give separate and equally good coaches, they are giving separate but not equally good coaches, and very different treatment. What I want in this law is something that does not necessarily raise any question of discrimination; that does not require anything to be done that the laws of the several States, which would have most interest in this question, do not already require to be done; and that is that the Interstate Commerce Commission shall have authority, and authority from the Congress of the United States, to see to it that the humblest man, without regard to color, who pays the same money that the white man pays, may have, not a seat in the same coach, necessarily, but that he shall have decent, respectable, acceptable, and equally good accommodations for his transportation. That is all there is in this. So far as the provision about passes is concerned, there is not, as the Senator from Indiana said a moment ago, any ambiguity about it. The only objection to it is that there is no ambiguity about it. Every Senator here knows that if this provision goes into the statute book as it is framed, there will be no more free passes for anybody, except only the excepted classes. There is not a man here who does not fully understand that and appreciate it.

Mr. BEVERIDGE. If the Senator will excuse me, I said the debate had proceeded upon the assumption that there was ambiguity in the Senator's language.

Mr. FORAKER. I am proceeding upon the theory that the Senator thinks there is ambiguity, and I am saying there is no ambiguity. Every man here understands the provision. Every man here knows it is to prohibit the further abuse of granting free passes. I do not want to dwell upon that any longer. I spoke about it sufficiently earlier in the day. But now a final word about the other provision. Every man here knows that if we are going into the business of rate making we assume a responsibility about it, and we should carefully provide that there should be equality of service for equality of pay. Now, who will vote against it? I want to see.

Mr. HOPKINS. Before the Senator from Ohio takes his seat, I wish to ask him if the difference between his amendment and the substitute offered by the Senator from Texas is this, that his amendment provides against free passes and in addition also provides for equality of accommodations—

Mr. FORAKER. That is all the difference there is.

Mr. HOPKINS. While the substitute simply provides against free passes.

Mr. BACON. Mr. President, there can be no possible necessity in the Senate's considering these two separate questions together in one amendment. The question of free passes is one thing and a distinct thing. It is a question of what shall be paid in the way of compensation by one man upon terms of equality with another man for the same service; in other words, whether one man shall pay for what another man receives free.

Mr. President, the question of discrimination is another and a distinct thing. There are in this bill other provisions which look to the question of discrimination, and if this question is to be discussed, and if such a provision is to be incorporated in the bill, I submit to Senators that the latter is the proper portion of the bill in which to incorporate it and not upon this particular part of it. Mr. President, is it the design of Senators—can it be the design of the Senator from Ohio and others who think like him—to incorporate upon the question of free passes, which he knows will receive the unanimous vote practically of the Senate, this additional subject-matter about which there is a difference, in order that the second subject-matter may carry with it strength it otherwise would not have?

Mr. FORAKER. Mr. President—

Mr. BACON. If the Senator will permit me for a moment—

Mr. FORAKER. If the Senator will allow me, I accepted an amendment offered by the Senator from Alabama, which removed all objections, as I understood, upon the question to which the Senator is now addressing himself, thereby showing that I had no such purpose as that, but only—

Mr. BACON. I am speaking of the fact that the Senator from Ohio joins in the same amendment the question of passes and the question of discrimination.

Mr. FORAKER. It is equality of pay and equality of service.

Mr. BACON. That may be true, but that relates to every other part of the bill. All through the bill runs the question of discrimination. I have confidence in the desire of the Senator not to take any unfair advantage in this matter. I want to call the attention of the Senator to the fact that he raises here a most vital question, a question of the deepest concern and importance to a very large section of this country that has a burden to bear which no other section of the country has to bear; a question of vital importance to the personal comfort and the social organization as well of our people.

The Senator himself says that the purpose of this amendment is not to secure a provision of law on this subject in the Southern States, because he recognizes the fact that that provision of law already exists in the Southern States by enactment of the Southern States. But the Senator avows the purpose to be to give the Interstate Commerce Commission the right to enforce the law, to go into the States and see whether or not the State of Georgia, for instance, is enforcing its law, and if it is not enforcing it, then to enforce it as a Federal law.

Mr. FORAKER. I suggest that the Interstate Commerce Commission will not go into the State any more on this point than it will on every other point on which it is authorized to act.

Mr. BACON. That may be, but that does not change the proposition that that is the purpose of the Senator. There can be no question which could be raised which would more deeply affect our people and which would more deeply concern them in their everyday life.

Mr. FORAKER. May I ask the Senator a question?

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Ohio?

Mr. BACON. I do for a question.



Mr. FORAKER. Does the Senator object to a provision in this bill securing equality of service and accommodation to all paying equal prices for transportation?

Mr. BACON. I am free to grant—

Mr. FORAKER. And if he does not, I am willing to have that put in the language of the Georgia statute. I do not object. I do not want—

Mr. BACON. I object to the Interstate Commerce Commission taking charge of this subject.

Mr. FORAKER. Yes; and I insist that they shall.

Mr. BACON. Very well; that may be. The Senator very well knows the fact that he has very nearly two-thirds of the Senators in this Chamber in his party, and consequently he can make his boast of what he will insist upon with very great confidence.

Mr. FORAKER. I did not make it boastfully.

Mr. BACON. The Senator's tone and manner were very boastful.

Mr. FORAKER. I withdraw the boastful spirit.

Mr. BACON. The Senator withdraws the boast, but at the same time it is well known that the Senator does not withdraw his purpose to insist upon it. So the question of phraseology does not amount to much.

I do insist upon it that a spirit of fairness ought to require that those two matters should not be put together. Give us, as the substitute proposes to give, the opportunity to vote upon the question of passes free from any embarrassing or conflicting question. We are all of us in favor of the proposition which will prevent the giving of free passes to anybody. I want to restrict it more than it is in the present law. But there is no possible necessity why the two should not be separate, and then if the Senator shall seek to incorporate upon this bill the independent feature, and he has the votes to do it, of course we can not complain. That is their right. But what we complain of is that they combine the two. I hope the Senator will see the propriety of such division.

I want to call the attention of the Senate to another matter. My objection is not to the principle of the law. That can not be, because for thirty years we have had in Georgia this law which the Senator now proposes to incorporate in the same words in this bill. It is not that I desire that the purpose he has in view shall be defeated; but it is the desire on my part and those who think with me—and I am sure I reflect the sentiments of the people of my section—to avoid what will be an incentive to strife and which will be taken advantage of by malicious and designing people who desire to stir up strife between the races and who will make complaints that are not well founded, and who would be constantly developing discord and discontent in the midst of a people who have every reason to avoid any influences of that kind. It is perfectly competent for the Senator to divide this amendment so that he will have that which relates to passes as an independent proposition. He will get, I suppose, on the provision prohibiting free passes, the unanimous vote of those of us who come from the section who will be particularly affected by the other part of this amendment. He will not jeopardize the other part of his amendment if he has the numerical strength to carry out his



announced purpose, and there can be no possible reason, to my mind, why the Senator should combine the two, unless he desires to put other Senators in the position of either voting against the part they approve or compelling them at the same time to vote for another part of which they disapprove.

Mr. FORAKER. I put them together only because they go together.

Mr. BACON. Will the Senator so divide it that we can call for a division?

Mr. FORAKER. I would have to frame the amendment anew, and it seems to me it is perfectly proper to provide that for the same compensation there shall be equally good service to all who travel. I do not go as far as the Senator's State statute goes. There is nothing here to interfere with the enforcement of the State statute. The whole thing is in the hands of the Interstate Commerce Commissioners. I hope they will never have any occasion to enforce this provision, but if they should have, they ought to have that authority.

Mr. CLAY. Will the Senator from Ohio let me ask him a question?

The VICE-PRESIDENT. Does the Senator from Georgia yield to his colleague?

Mr. BACON. I am going to yield the floor in a moment, and my colleague can then present his views in full.

I want to say this: Here is a substitute offered by the Senator from Texas which fully covers the ground, so far as free passes go, and which will receive the unanimous vote, I repeat, of Senators on this side of the Chamber. The fact that the substitute is adopted will not prevent the Senator from Ohio from offering as an independent measure whatever he may desire to offer upon that subject, so that if the Senate adopts the substitute offered by the Senator from Texas it will in no manner be agreeing to what I say on the subject, or disagreeing to the opposite view of the Senator from Ohio, and it will give the opportunity to Senators on this side to vote independently for the matter providing against free passes, and still leave the Senator from Ohio absolutely free to offer any amendment he sees fit in regard to the matter of discrimination, which more properly, in any event, comes to another part of the bill.

Mr. TILLMAN. Mr. President, I had——

Mr. MONEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from South Carolina yield to the Senator from Mississippi?

Mr. TILLMAN. Certainly.

Mr. MONEY. I should like very much to ask a question of the Senator from Ohio.

Mr. TILLMAN. If the Senator will pardon me, we are not proceeding under the rules which prevail every day, and I should like to get through what I have to say, and then the Senator from Mississippi can ask the question of the Senator from Ohio.

The VICE-PRESIDENT. The Senator from South Carolina declines to yield.

Mr. TILLMAN. Mr. President, we have had a great many discussions here on this rate bill, but I never expected to have the race question dragged into it. I deprecate that there should be any allusion to it in this debate.

Mr. FORAKER. Mr. President, I did not——

Mr. TILLMAN. I am not charging the Senator from Ohio with the responsibility for it. Unfortunately for myself, though, I have been unable to see things through the same spectacles with some other Senators here, and I for one welcome the recognition by a Senator of the North that used to be known—and I do not intend it as any reflection upon him—as “Fire Alarm,” because of this very issue. I welcome, I say, the recognition by that Senator that there are conditions in the South which make it imperative that we should be allowed to deal with that question in our own way. Our laws recognize equality. We compel the carriers to give the same kind of transportation and character of coach to the two races. We only compel them to keep them separate; and when the Senator from Ohio and his colleagues shall recognize that in doing that we intend to stand by that provision in good faith, and want the law enforced by our own people, and will enforce it, I for one am ready to say that the Interstate Commerce Commission may go down there and see that the colored people have just as good coaches to ride in as the white people, because the roads are owned in the North, anyhow, and I want no discrimination by northern capitalists against southern negroes. [Laughter and applause in the galleries.]

The VICE-PRESIDENT. The Chair will inform the occupants of the galleries that under the rules of the Senate manifestations are not in order, and he requests the occupants to refrain from a repetition.

Mr. MONEY. Mr. President, I desire to ask whether, if the amendment is adopted and becomes a law, a colored passenger going through a State from one State to another, coming under the interstate-commerce law, would be compelled to go into a coach equally as good provided for him by the State statute as he goes through that State, or would he be permitted under this provision to go into a coach set apart for white people by the law of that State?

Mr. FORAKER. I stated with some particularity that I did not undertake to touch upon the question of separate coaches at all. The only requirement is that there shall be equally good service and equally good accommodation. If the railroad company should furnish only one coach all would have to travel in it, but if they have two kinds of passengers and do not want them to ride in the same coach they must provide equally good coaches for them. In that respect I do not undertake to interfere with the State law.

They have such a statute in Texas, such a statute in Tennessee, and such a statute, I think, in about every other Southern State. I have read from two or three of them. I do not go as far as any of those statutes go. I only want to put under the Interstate Commerce Commission, for that board to stand upon, something that will give them authority to enforce equal treatment if there are complaints, and just complaints, that there is not equal treatment.

Mr. MONEY. Mr. President, the Senator did not answer the question that I asked.

Mr. FORAKER. I thought I was answering it.

Mr. MONEY. I asked for his construction of the law, if it should have his amendment incorporated in it, whether a col-

ored passenger going through a State from a State beyond or a State on the border would be at liberty to go into a white coach provided by the law of that State, although a colored coach equally good was provided, being, in other words, in the terms of his amendment, "equally good?"

Mr. FORAKER. Certainly he would not be. I do not remember just how the Senator put his question, but this does not interfere with such a requirement as the Senator refers to by State statute. He could be required, if a State passenger, to go into a separate coach if it was equally as good, but not if an interstate passenger. I do not make any such requirement, nor do I interfere with it where the State has made it.

Mr. OVERMAN. Did I understand the Senator to accept the amendment as to the class of accommodation?

Mr. FORAKER. Certainly, I accepted it; so that there might be no question of discrimination, or so-called "Jim Crow car" question raised.

Mr. BAILEY. Mr. President, I rather thought that the purpose of this, and I was sure that the effect of it, would be to recognize the right of the carrier to provide separate cars for the two races, provided one coach was as good as the other. The separate-coach law of Texas and the separate-coach law of Arkansas do not supplement each other, because a passenger starting in Arkansas to go into Texas is not subject to the law of either State. But if I understand this provision, and I hope that that is what it means, it is that carriers operating in that section of our country where these arrangements are necessary can provide separate coaches for each race and then can require each race to stay in its own coach, provided one coach is as good as the other coach.

Mr. FORAKER. Yes, that is the only purpose of it, if they see fit to provide separate coaches which would be equally good.

Mr. BAILEY. If that is true, then surely those of us from the South, where we try to enforce the separation of passengers, could find no possible objection to it. Indeed, instead of being objectionable to me, I am glad to take it, because it enables the carriers to conform in their interstate passenger services with the law of the States on that particular subject. Those of us who live in that part of the country and have experienced the relief which the separate coaches have brought, surely agree that every carrier operating there depending upon the patronage and favor of those people will provide the separate coaches for interstate travel if the law of Congress permits them to do it.

Mr. MONEY. Mr. President, the experience of every State which has adopted a "Jim Crow" law is that the railroad companies would not, for the sake of the good will and patronage of the country through which they operated, provide these separate coaches, for the experience of the Southern States is that every single railroad company which operates in their limits would not provide the separate accommodations, however much it might be demanded by the white people of that country, and it requires a State statute to compel them to do it.

The inquiry I made of the honorable Senator from Ohio was, When this interstate-commerce law of Congress overrode the State law whether a negro passing from one State to another through a State, becoming an interstate passenger, would be

compelled to abide by the State law, and whether the railroad companies would then be compelled to provide the separate cars? I do not, for one, believe that they would be compelled to do it, and I have had this much experience with them that I do not believe they will do anything they are not compelled to do which will cost them an extra dollar.

Mr. BAILEY. Will the Senator from Mississippi permit me to ask him a question?

Mr. MONEY. Certainly.

Mr. BAILEY. I agree with the Senator that the railroads would not provide an extra coach at an extra expense, but they are compelled to provide the extra coach for the intrastate passengers of different races, and therefore, having already the separate coaches, they can compel interstate passengers to stay in the coach provided for each race without any additional expense to them.

Mr. MONEY. But the trouble about that is that it is not practical. Under this amendment you can not order a passenger to get up and go into another coach equally as good if he is satisfied with the seat he occupies. So that falls to the ground. The railroad company could do it, perhaps; but will they do it? Consequently there is no remedy for a State that has seen fit to pass a law which separates these two classes of passengers with equally good accommodations, and they are equally good in my State I know, and in other Southern States. This law would come in to override the State statute, and there is no provision that the company shall provide separate cars for interstate passengers.

Mr. BAILEY. Does the Senator from Mississippi believe that this law can divest the State control over the supervision of intrastate passengers?

Mr. MONEY. Oh, of course not.

Mr. BAILEY. Of course not.

Mr. MONEY. Of course not; but what I mean to state is that under such an interstate-commerce act, if passed, the passenger in a coach beyond the limits of the States having the "Jim Crow law," as it is called, keeps his seat in that coach, and you make no provision here by which he is to go into any other coach when he reaches the State line where there is such a law. There is nothing in this amendment, and I venture to say there will be nothing offered here, such as is in every State statute on this subject; but there will be provision made for equally good accommodations. The Senator said it provided for this distinction between the passengers, and also provided that they should have equally good accommodations.

Mr. BACON. I wish to ask the Senator to permit me in his time to ask the Senator from Ohio a question.

Mr. MONEY. Certainly.

Mr. BACON. That is, if the Senator from Ohio is willing to incorporate in the amendment a specific requirement that railroads engaged in interstate commerce shall observe the local laws of the States with reference to separate cars for the separate races.

Mr. FORAKER. I would not want to do that, Mr. President. I think I have gone as far as I care to go—not as far as I might very well go—in simply requiring equally good service.

Mr. BACON. The Senator objects, then, to the incorporation here of a specific requirement that railroads engaged in in-



terstate commerce shall in this particular observe the laws of the State through which they pass? The Senator objects to that.

Mr. FORAKER. I do; because I do not know what all those laws are. If there is any law which does not require equally good service and equally good accommodations I do not want to subject the Interstate Commerce Commissioners to an observance of that requirement. All I want is that they may have equally as good coaches if the carriers see fit to provide separate coaches. I am not going to agree to an amendment that would require them to do the one thing or the other, but to require them to furnish equally good service if they see fit to make them separate.

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*May 9, 1906.*

The VICE-PRESIDENT. The Secretary will again read the amendment, at the request of the Senator from Virginia.

The SECRETARY. At the end of section 1, after the amendment already agreed to at that place, insert:

It shall be the duty of carriers engaged in interstate commerce to give like accommodations to all persons paying the same compensation for interstate transportation of passengers.

Mr. FORAKER. I move to amend the amendment as offered by the Senator from Missouri by striking out the word "like," in line 2 of his amendment, and inserting in lieu thereof "equally good service and;" so as to read, "to give equally good service and accommodations."

Mr. MONEY. That is right.

Mr. WARNER. I have no objection to that amendment.

The VICE-PRESIDENT. The Senator from Missouri modifies his amendment as suggested by the Senator from Ohio. The modification will be stated.

The SECRETARY. Strike out the word "like," in line 2, and insert "equally good service and."

Mr. BACON. So as to read?

The SECRETARY. So as to read:

It shall be the duty of carriers engaged in interstate commerce to give equally good service and accommodations to all persons paying the same compensation for interstate transportation of passengers.

Mr. BACON. Mr. President, we had some discussion on this question a few days ago. I desire to say for myself—I have had no opportunity to confer with others, but the amendment now offered by the Senator from Ohio is a very great improvement on the one offered before, and so far as I know it is unobjectionable.

The VICE-PRESIDENT. The question is on agreeing to the amendment as modified.

The amendment as modified was agreed to.

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*May 10, 1906.*

Mr. FORAKER. Mr. President, I am a member of the committee that had this bill under consideration and from which



there was finally a report made. In view of all that has been said about the responsibility of the committee in that connection, I think it is due to the committee to say that we received from the Interstate Commerce Commission a bill which we understood they had prepared with very great care. It was then taken under consideration, and after it had been considered for a few days, before we had reached any final conclusion with respect to it, when we were in good faith debating its respective provisions, we learned from the newspapers and otherwise that that bill, by the friends of the proposed rate legislation, had been abandoned, and that another bill had been substituted; and in a printed form it was brought before us for our consideration. Later that bill was introduced in the Senate by the Senator from Iowa [Mr. DOLLIVER]. We never had any opportunity in the committee to compare the two bills and take action with respect to them which would show our preference for the one over the other.

The truth is that the whole matter is properly characterized in this memorandum from the Interstate Commerce Commission—and it is the language I wanted the Senator from Colorado [Mr. TELLER] to have read a few minutes ago, so that every Senator here might have the benefit of it—when they say:

The sixth section of the present law, and as it is proposed to be substantially reenacted with a few amendments in the Hepburn bill, is framed upon no consistent or reasonable theory or plan.

That is exactly true. That is the kind of a bill we have, relating to the most important subject we have had under consideration, as the Senator from Indiana [Mr. BEVERIDGE] a few minutes ago well said, since the civil war. That is the kind of a bill that has been prepared and brought in here, and with respect to which in that committee we could not consider and act upon any amendment whatever. Every amendment was cut off from consideration by the action that was taken by a majority of the committee. All these matters would have been carefully gone over and would have been carefully considered and acted upon.

When the bill was thus brought in, when consideration of the bill was thus denied, when opportunity to act upon it was thus prevented, I do not wonder that now as we come to consider it in the Senate we have this kind of difficulty. It is a serious difficulty. I am not satisfied with the sixth section, either as it is in the bill before the Senate or as it is in the bill as it was originally prepared by the Interstate Commerce Commission; but I am of the opinion, in view of the comments the Interstate Commerce Commissioners have made, that their section as they originally prepared it and sent it to us is a better section than the one in the bill before the Senate. For that reason I am disposed to favor the amendment that has been offered by the Senator from New Jersey as a substitute as he has proposed.

But, Mr. President, except you take up this printed memorandum and read it through from beginning to end, you will have very great difficulty to tell just what the distinctions are. As the Commission point out, one of the most serious difficulties is that this section, which was framed without regard to any reasonable theory or plan—I believe is the language of the Commission—is what we had no opportunity to change. The Sena-

tor from Iowa [Mr. DOLLIVER] has suggested to me that it was framed twenty years ago. That is true, but the Senator adopted it in his bill, and we were given no opportunity to point out its defects or to take any action upon it.

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Mr. FORAKER. Mr. President, very much like the Senator from Iowa [Mr. DOLLIVER], I do not rise to oppose the amendment of this bill so as to provide the penalty of imprisonment for the violation of the interstate-commerce act or any provision of this bill, if we should see fit to make it a law; but I rise, rather, as he did, to point out how it came that in the legislation known as the "Elkins law," enacted February 19, 1903, we abolished this penalty of imprisonment.

The Senator from Wisconsin [Mr. LA FOLLETTE], speaking on that same point a few moments ago, took occasion to say that the Interstate Commerce Commission had never recommended the abolishment of the penalty of imprisonment. Technically and strictly speaking, that is probably true; but on another occasion I called attention to the fact that in the Seventeenth Annual Report of the Interstate Commerce Commission, which was a report published immediately after the Elkins law was enacted, the Commission took occasion, speaking of that law, to use this language, to which I call the attention of Senators.

Speaking of the Elkins law, the Commission, in the first report after the Elkins law was enacted, said:

The amended law has abolished the penalty of imprisonment, and the only punishment now provided is the imposition of fines. As the corporation can not be imprisoned or otherwise punished for misdemeanors than by money penalties, it was deemed expedient that no greater punishment be visited upon the offending officer or agent. The various arguments in favor of this change have been stated in former reports and need not here be repeated.

I submit that the language thus employed by the Commission indicates what the fact was, that the Commission had a distinct and positive relation to the enactment of the Elkins law. The members of that Commission appeared before the Interstate Commerce Committee, as every member of that committee knows, and every member of that committee knows also that every member of the Interstate Commerce Commission who appeared before that committee represented that there should be that change made in the law.

When I spoke here on another occasion and called attention to that fact, I relied upon the expression made by the Commission in this report, that they had repeatedly in former reports expressed the argument in favor of this change. I relied upon that, and made the statement that they had repeatedly, in their former reports, made that recommendation. I have since then looked through their former reports, and I do not find their former recommendations as strong as I had supposed I would find them from what they had said when they appeared before the Interstate Commerce Committee, and from what they said in their report following the enactment of that legislation. But I call attention to the fact that in the twelfth annual report, at page 19, speaking of the difficulty of enforcing the law, they say:

If it is asked why the criminal remedies are not applied, the answer is that they have been, and without success. The most earnest efforts have been made by the Commission and by prosecuting officers in vari-

ous parts of the United States to punish infractions of this law. While some fines have been imposed, no substantial effect has been produced. It is plain to the Commission that satisfactory results can not be obtained from this course. The difficulties in the way of securing legal evidence necessary to a conviction are such as to be in most cases insurmountable. The fact may be morally certain, but the name, the date, the amount can not be shown with the particularity and certainty required by the criminal law.

And so they went on at length. In other reports they have repeated substantially the same statement, calling attention to the fact that in criminal prosecutions to enforce the law it was necessary to prove a violation of the law, according to the rules governing in the trial of criminal prosecutions, beyond a reasonable doubt. That is what they had been unable to do. Therefore they appealed to us to make the law one they could enforce and asked us to abolish the provision providing for imprisonment as one of the penalties.

Now, that is exactly how that proposition came before the Interstate Commerce Committee, as every member of the committee knows. So far as I am aware, no railroad had anything whatever to do with it or even any knowledge of it, although they may have been fully informed. I remember that the very same argument that is repeated here in these reports was made before the committee, and the committee, in passing upon the Elkins law and repealing imprisonment as one of the penalties for a violation of the interstate-commerce act, supposed they were acting in the line of the recommendation of the Interstate Commerce Commission, the recommendations of which body the committee was disposed to follow, so far as I can remember the consideration of that legislation in committee.

Whether that was wise or not, I do not intend to stop to discuss. I remember that I doubted the wisdom of the change at the time when it was done. I think every member of that committee would testify that on my part it was with great reluctance that I reached the conclusion that we ought to favor the abolition of imprisonment for a violation of the law. I was one of the very last to yield to it; but I did, out of deference to the opinion of the members of the Interstate Commerce Commission, because I thought I could understand how it was that they would have difficulty in proving beyond a reasonable doubt in that character of cases the offense for which a man might be indicted.

Another argument that was used was that it did not follow that violators of the law would go free from imprisonment, but that by providing, as we did in the Elkins law, that when it was charged that rebates were being given or other practices were being indulged in, in violation of the law, it should be prohibited by injunction; then, if there should be a further such violation, it would be an act in contempt of court, for which the party could be summoned before the court, when he could be tried for contempt without the difficulty attending a criminal trial, where everything must be proved beyond a reasonable doubt, and imprisonment for contempt could be imposed and the result would be far more efficacious and far more expeditious than it was under the other law.

Now, in another report—I can not tell precisely which one, but I read it only a few days ago; I think it must be about the fourteenth or the fifteenth; I have been unable to put my hand on it, but I know it is in one of them—the Interstate Com-

merce Commission, speaking on this point, in a report to Congress, said while as a Commission they could not recommend that we abolish imprisonment for a violation of the law, yet they would say that if Congress saw fit to do it there was not a member of the Interstate Commerce Commission who would interpose any objection, because their experience had been such that they would not feel warranted in doing so. Almost that precise language was employed by the Commission.

Therefore I say enough appears in this seventeenth annual report, following immediately after the Elkins law, in which they say it was thought expedient thus to legislate because of the argument which had repeatedly before that time been set out in their reports, to justify us in assuming, without any testimony to the contrary, that the Interstate Commerce Commission did favor exactly this change in the law. They not only favored it, as they stated in the report, by fair interpretation, but they favored it positively and aggressively, as every member of the Interstate Commerce Committee knows, by appearing before that committee and making statements to that effect.

Mr. GALLINGER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from New Hampshire?

Mr. FORAKER. Certainly.

Mr. GALLINGER. The Senator from Ohio is giving very interesting testimony on this point. I wish to ask him if the Interstate Commerce Commission, at any time since then, has asked to have the penalty of imprisonment restored?

Mr. FORAKER. Never; never since then; and, as the Senator from Iowa well says, Mr. President, everything that is being done to-day to break up the practices about which complaint is made is being done under the Elkins law, and the very best legislation we can enact here is to broaden and strengthen the Elkins law so as to make it still more effective, as we easily can. If we have in view only the correction of evils, that is the sure way to reach them.

Take the report made by Commissioner Garfield a few days ago. I read it through with care, in so far as we have been favored with it. Assuming that all he says is true, about which I do not know anything except that his facts are disputed to some extent, but, assuming for the sake of the argument that they are all true, there is not one thing pointed out by Mr. Garfield, not one evil mentioned by him, that the bill we now have under consideration will reach or remedy—not one. The evils he complains of all consist, in one form or another, of rebates and discriminations, open and secret, practiced under every kind of guise, in every sort of form that the ingenuity of railroad officials and shippers could suggest. Not one of them can you reach by this legislation, upon which we have spent three or four months of time. On the contrary, there is not one of them that you can not reach in fifteen minutes in a court of equity having competent jurisdiction under the Elkins law. There is no rate or discrimination pointed out by him that you can not reach.

It may be true, and doubtless is, as the Senator from Wisconsin says, that after the Elkins law was enacted it was discovered that rebates were being granted in Wisconsin. I do not



know anything about the conditions there. But I do know that if the Elkins law had been enforced by the officials charged with the duty of enforcing it under the law there would not have continued any such condition of things, and there is no law on the statute book that now provides, and this bill if enacted will not provide, any remedy whatever against rebates. The House committee, in their report, said they did not undertake to deal with rebates and they did not undertake to deal with discriminations between shippers. They did not undertake to deal with anything except only excessive rates, the least troublesome and the least burdensome evil there is.

Mr. President, I have here a statement which I took out of a publication called "Freight." It comes to me through the mail, through the kindness of somebody who favored me with it, in which there is from week to week a discussion of this legislation that is proposed and of everything pertaining to the freight business throughout the country. On page 243 of the number I have before me, which is dated New York, May, 1906, I find a statement as to the proceedings under the Elkins law. It gives the number of decisions by the courts sustaining and enforcing that law, and there are quite a number of them, all of them important cases. There was the New Haven Coal case, one of the most important cases decided by the Supreme Court of late years. That was under the Elkins law. There was the Trans-Missouri Freight case, involving a question of discrimination between communities. That was under the Elkins law. There was the case of the packing houses as against the live-stock men—I have forgotten the style of the case—decided by Judge Bethea last January or February. That was under the Elkins law. There was the case a few days ago of the Chicago, Burlington and Quincy road, where that corporation was fined heavily. That was under the Elkins law. There was the case of the Fairmont Coal Company in West Virginia, where the proceeding was by mandamus to compel equal treatment in furnishing cars. That was under the Elkins law. In every one of these cases there was relief instantly at the hands of the court upon application for a restraining order or a writ, which was finally made permanent.

Mr. KNOX. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Pennsylvania?

Mr. FORAKER. Certainly.

Mr. KNOX. Let me suggest to the Senator from Ohio that the very important case of *Baer v. The Interstate Commerce Commission*, which decided that the anthracite coal combination had to expose its books for examination, was under the Elkins law.

Mr. FORAKER. That was under the Elkins law.

Mr. KEAN. And the tobacco case.

Mr. FORAKER. And the tobacco case, as the Senator from New Jersey suggests, decided only recently. It was under the Elkins law. So it is that in every instance where the Elkins law has been invoked it has given instant relief, because in every one of these cases upon the filing of a bill a temporary restraining order or writ of mandamus or other order was allowed, which ultimately was made perpetual.



The VICE-PRESIDENT. The time of the Senator from Ohio has expired.

Mr. FORAKER. Allow me time enough to put in the RECORD this list of cases, and at another time I wish to point out and compare the cases decided by the Commission with those decided by the courts, when it will be found that the courts are far more expeditious.

The VICE-PRESIDENT. The cases will be inserted in the RECORD, as requested by the Senator from Ohio, in the absence of objection.

The cases referred to are as follows:

PROCEEDINGS UNDER THE ELKINS LAW.

ST. PAUL, MINN., April 25, 1906.

EDITOR OF FREIGHT.

SIR: Can you advise me the proceedings which have been instituted under the Elkins law?

J. G. WEST.

The proceedings under the Elkins law are as follows: Fifteen injunctions to enjoin departures from published rates, twenty-one indictments for violation of the act, three indictments for conspiracy to violate the act.

The decisions of the courts upon this law are as follows: *United States v. Mich. Cent. R. R. Co.*, 122 Fed., 544; *W. Va. N. R. R. Co. v. United States*, 134 Fed., 198; *I. C. C. v. C. and O. R. R. Co.*, 128 Fed., 69. — U. S., —; *Mo. Pac. R. R. Co. v. United States*, 189 U. S., 274; *United States v. A., T. and S. F. R. R. Co.*, — Fed., — (Judge Phillips). Proceedings in the courts under the Elkins law:

1. DECISIONS.

*United States v. Mich. Cent. R. R. Co.*, 122 F. R., 544.  
*W. Va. N. R. R. Co. v. United States*, 134 F. R., 198.  
*I. C. C. v. C. and O. R. R. Co.*, 128 F. R., 69. — U. S., —.  
*Mo. Pac. R. R. Co. v. United States*, 189 U. S., 274.  
*United States v. A., T. and S. F. R. R. Co.*, — F. R., — (Judge Phillips).

2. INJUNCTIONS TO ENJOIN DEPARTURES FROM RATES.

*United States v. C. and N. W. R. R. Co.*  
*United States v. Ill. C. R. R. Co.*  
*United States v. Mich. Cent. R. R. Co.* (See decisions.)  
*United States v. Pa. Co.*  
*United States v. P., C., C. and St. L. R. R. Co.*  
*United States v. L. S. and M. S. R. R. Co.*  
*United States v. Wab. R. R. Co.*  
*United States v. A., T. and S. F. R. R. Co.* (See decisions.)  
*United States v. C., R. I. and P. R. R. Co.*  
*United States v. C., M. and St. P. R. R. Co.*  
*United States v. C. and A. R. R. Co.*  
*United States v. C., G. W. R. R. Co.*  
*United States v. Mo. Pac. R. R. Co.*  
*I. C. C. v. C. and O. R. R. Co.* (See decisions.)  
*United States v. C., B. and Q. R. R. Co.*

3. INDICTMENTS.

*United States v. Zorn, Williams & Bushfield.*  
*United States v. C., B. and Q. R. R. Co.*  
*United States v. Swift & Co.*  
*United States v. Armour Packing Co.*  
*United States v. C. and A. R. R. Co.*  
*United States v. C., M. and St. P. R. R. Co.*  
*United States v. Cudahy Packing Co.*  
*United States v. Faithorn, Wann, and C. and A. R. R. Co.*  
*United States v. Nelson Morris & Co.*  
*United States v. Kreskap.*  
*United States v. C., B. and Q. R. R. Co. and Miller and Burnham.*  
*United States v. G. N. R. R. Co. and Campbell.*  
*United States v. R. J. Wood & Co.*  
*United States v. Mutual Transit Co. (1).*  
*United States v. Lide & Diver.*  
*United States v. Mutual Transit Co. (2).*  
*United States v. Diver.*  
*United States v. Suffolk and C. R. R. Co. and Bosley.*

United States v. Gay Manufacturing Co.  
 United States v. N. Y. C. and H. R. R. Co.  
 United States v. Del. and H. Co.

4. INDICTMENTS FOR CONSPIRACY TO VIOLATE.

United States v. Thomas & Taggart.  
 United States v. Crosby, Thomas & Taggart.  
 United States v. Swartzchild & Sulzberger Co.

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*May 14, 1906.*

Mr. FORAKER. I offer an amendment to be inserted as a separate section, following section 7, to be numbered section 8. The amendment is printed at page 191 of the larger compilation of amendments.

The VICE-PRESIDENT. The amendment proposed by the Senator from Ohio will be read.

The SECRETARY. On page 191 of the printed amendments, add at the end of section 7 a new section, to be known as section 8, as follows—

Mr. FORAKER. Unless the Senate desires that the amendment be read at this time, I will state that the amendment has been read already. I made it the subject of extended remarks here some ten days ago. I will have it read or not, as Senators desire. I can explain in a very few words what the amendment is. If Senators will turn to the printed amendments on page 191, they will find the amendment there set forth. By glancing at it they will see that while the reading would require some time the new part that is proposed of the intended law is very brief. In other words, this is simply a proposition to amend section 3 of the Elkins law as it now stands. If any Senator prefers to have it read rather than simply turn to it as it appears, of course it can be read at the desk.

Mr. HALE. It is a very important amendment. I think it had better be read.

The VICE-PRESIDENT. The Secretary will read the amendment submitted by the Senator from Ohio.

The Secretary read as follows:

SEC. 8. That section 3 of the act approved February 19, 1903, entitled "An act to further regulate commerce with foreign nations and among the States," be, and the same is hereby, amended so as to read as follows:

"SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is, either singly or in cooperation with one or more carriers, publishing and charging unjust or unreasonable rates therefor, or is committing any discriminations forbidden by law, whether as between shippers, places, commodities, or otherwise, and whether effected by means of rates, rebates, classifications, preferentials, private cars, refrigerator cars, switching or terminal charges, elevator charges, failure to supply shippers equally with cars, or in any other manner whatsoever, it shall, if the complainants so request or if for any reason it prefer or deem advisable to proceed under the provisions of this section instead of under the other provisions of this act, be its duty, if such carrier or carriers will not, after due notice, desist from such violation of the law, to file with the Attorney-General a brief statement of its grounds for such belief and the evidence in support thereof, and thereupon, under his direction, and in the name of the United States, a petition shall be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in any one of such judicial districts or States,

whereupon it shall be the duty of the court summarily to inquire into the facts and circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary; and upon being satisfied of the truth of the allegations of said petition said court shall enjoin, according to the ground of complaint, the publishing and charging of all of any such rate or rates so complained of in excess of what the court shall find to be reasonable and just, which shall continue to be the lawful rate as heretofore and now prescribed by statute, such injunction to continue in force during such period as the same or substantially the same conditions may continue as are established by the evidence in such case, or shall enforce an observance of the published tariffs if they are found to be just and reasonable, or direct and require a discontinuance of such discriminations by such proper orders, writs, and process as will, as nearly as may be, prohibit unlawful discriminations as to both persons and places and secure equality of right and treatment to all shippers and localities, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier or carriers complained of; and all proceedings hereunder shall be subject to the right of appeal to the Supreme Court, as now provided by the act of February 11, 1903, to expedite the hearings of suits in equity; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon, unless the circuit or Supreme Court, on application therefor made for good cause, so order. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this act shall be prosecuted at the cost of the United States or the railroad company or companies as the court may adjudge equitable and just, and such proceedings shall not preclude the bringing of suit for the recovery of damages by any party injured or any other action provided by said act approved February 4, 1887, entitled 'An act to regulate commerce' and the acts amendatory thereof. And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and any shipper or shippers who may be interested, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper or shippers, which relate directly or indirectly to such transaction. The claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence or information, documentary or otherwise, in such proceeding: *Provided*, That the provisions of an act entitled 'An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," "An act to regulate commerce," approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted, approved February 11, 1903,' shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission."

Mr. FORAKER. Mr. President, I think the bill under consideration has been greatly improved by the amendments made by the Senate. I think it was a great improvement to adopt the so-called "court-review provision." I think it was also a great improvement on the bill as passed by the House to amend it by adopting the provision which requires carriers to confine themselves after the 1st day of May, 1908, to the business of carrying alone; in order words, to require them to go out of the carrying on of other business than that which properly belongs to common carriers.

I think it was an improvement also to restore the imprisonment clause, and I think we have improved the bill further and very materially by providing penalties for shippers who ask

for and receive rebates. I think the Senator from North Dakota [Mr. McCUMBER] did a good day's work when he offered that amendment and secured its adoption.

But notwithstanding all these improvements, Mr. President, the bill which we are about to enact is yet open to some very serious objections; objections that go to the constitutionality of the measure as well as to its efficiency, if it should be upheld in the courts. In the first place, notwithstanding all we have done and all we are likely to do, the bill as it will become a law will confer upon the Interstate Commerce Commission the three independent and coordinate powers of Government—judicial power, executive power, legislative power. I do not see how the bill can be upheld in the courts with that commingling of all these powers in the Commission.

It also will, in my judgment, clearly delegate legislative power. The Senator from Wisconsin [Mr. LA FOLLETTE] in addressing the Senate a few moments ago in behalf of his amendment made a strong argument in favor of his proposition by pointing out that the bill has that deficiency. I understood him to go so far as to express the opinion that if the amendment he was then discussing should not be adopted the standard of just and reasonable by which the Commission is to determine rates will remain so indefinite as to be no standard at all, practically.

Mr. LA FOLLETTE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the junior Senator from Wisconsin?

Mr. FORAKER. I do, simply for a question. I am limited as to my time.

Mr. LA FOLLETTE. I wish merely to state that I did not mean to say what the Senator represented me as saying. I simply mean to say that it does not afford any means for the Commission to ascertain whether the rate is reasonable or not.

Mr. FORAKER. I may not have correctly understood the Senator. But I do not understand that his explanation changes the effect of what he said. I understood him to be of the opinion that the fixing of rates would be a matter of judgment, without any definite standard, and therefore the legislative power would be delegated. But whether that was his opinion or not, it is clearly my opinion.

In addition to that, Mr. President—I have only time to enumerate them, not to discuss them—the bill will still be liable to the constitutional difficulty I argued at length on a previous day in this debate of fixing through routes and joint rates in such a way as to have the legal effect of taking private property without just compensation, and it will be, in my opinion, unconstitutional on that account.

There is a trouble I commented on frequently during this debate about jury trials, and there is a question about the power of visitation that I spoke of this morning when that clause of the bill was under consideration. In addition to that we have got to run the risk in the courts of the effect of the severe penalties that have been commented on previously in this debate not only by myself, but by many others.

So, Mr. President, when we shall have done for this bill all we have done and all we are likely to do, so far as we are at present advised, it will be a bill as to which there can be urged



very serious objections. It may perish—and it is my opinion that it will—in the courts.

Now, whether Senators agree with me in that or not, they must concede, one and all, and I think one and all do concede, that these serious objections to the validity and constitutionality of the bill will remain, after we have done all we can, to be urged against it in the courts.

Now, Mr. President, I take it that every Senator here is actuated by a desire to remedy the evils that have been justly complained of by the shippers of this country. I have no other purpose. I want a law that will be efficient, a law that will be upheld in the courts, a law that will not be a disappointment to the people of this country when we have put it upon the statute books; and it is because we have apprehension about the efficiency and the constitutionality of the bill we have been considering that I have, by the amendment which has just been read at the Clerk's desk, suggested an alternative remedy.

Now, that is what I want Senators to get into their minds. What I have suggested is not in conflict with a line of the bill we have been considering. It does not weaken or destroy any provision of the bill. It is an addition to that. It is what I have properly called it, an alternative remedy. It provides that when a complaint is made to the Interstate Commerce Commission, the complainant, whether the complainant be a shipper or be a community, whether the complaint be of a rebate or of an excessive rate, or of a discrimination, the complainant shall, if he so desires, make known to the Commission that instead of proceeding before the Commission under the bill we have been considering, to there have a full and complete hearing and then to go into the courts to have all that reviewed, shall make request of the Commission, and it shall be the duty of the Commission to send it at once to the court. First, of course, I should have said, the Commission shall stop to inquire whether or not there is a reasonable ground for the complaint.

If Senators will look at the amendment I have offered, they will see it is but an amendment of the existing law. The Commission shall stop and inquire, when they receive the complaint in a preliminary way, whether there is probable ground for the complaint. They shall see whether or not they can induce the railroad, just as they do now, to desist from the practice, if they think they are engaged in a wrong practice. Failing in that, they shall at once send it to the court, where it shall be prosecuted by the United States district attorney in the name of the United States, without any expense whatever to the shipper; and it shall apply to excessive rates, to rebates, and to discriminations.

Mr. President, I have not time, as Senators recognize, to go into any detailed and elaborate explanation of this amendment. I want to say again, as I have said heretofore, that this is a proposition by which I am seeking only to broaden and strengthen existing law. It is a law that has already been put to the test in the courts. It has been found efficient, for notwithstanding criticisms that have been passed upon it in the course of this discussion, it is the law under which to-day everything is being done that is being done by the Department of Justice to break up and prevent these practices of which the people so complain as against the railroads.



Now, while we are legislating about this subject, while we are familiar with it, when we are fully advised, I do not understand why, in addition to the particular plan we have already legislated upon, we should not make better and stronger and more efficient the law under which these proceedings are already being successfully carried forward.

That is all there is of this amendment. I might cite authorities, and I would gladly do that if it should be necessary, to show that there is not a provision here that has not been passed on by the courts favorably. There is not a provision here that the courts have not expressly upheld, and therefore if we should adopt the amendment we have no risk to run in that regard.

I hope the amendment may be adopted.

Mr. NELSON. Mr. President, I regret that I can not see my way clear to agree with the Senator from Ohio [Mr. FORAKER] in respect to this amendment. I realize the beneficent purpose he has in view; but the practical effect of the amendment, in the first instance, is to transfer the rate-making power from the Commission to the court. The first clause provides that after any complaint is made to the Interstate Commerce Commission in reference to unjust and unreasonable rates and discriminations "between shippers, places, commodities, or otherwise," whether it is affected by rebates, etc., the complainant may in that case, if he prefers, without any other ceremony bring it into court.

In reference to that provision, I wish to suggest how easy it would be for a railroad company to get some shipper to make a pro forma complaint to the Interstate Commerce Commission, and then after he has made that complaint avail himself of this privilege and take it into court. Then on page 3 of the amendment you will find the following:

And upon being satisfied of the truth of the allegations of said petition said court shall enjoin, according to the ground of complaint, the publishing and charging of all of any such rate or rates so complained of, in excess of what the court shall find to be reasonable and just, which shall continue to be the lawful rate as heretofore and now prescribed by statute.

That amounts to nothing else, Mr. President, than the court in that case to pronounce upon the rate complained of, and then if the court find that any part of the rate is too high, to scale it down and fix a rate that is just and reasonable. Now, that is in fact the power we propose to vest in the Interstate Commerce Commission. It is giving the court the right in the first instance to exercise a legislative function to pass upon rates.

I have not time to dwell more on that feature of the amendment, but I want to call your attention to the remarkable concluding paragraph, which attempts not only to nullify the interstate-commerce act, but also the Sherman Act.

Mr. FORAKER. Mr. President—

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Ohio?

Mr. NELSON. Certainly.

Mr. FORAKER. The Senator from Minnesota is mistaken. I did not offer that as a part of the amendment. Even if it had been offered, it is only what the President has recommended twice to Congress at this session should be done. That is excluded, however. I do not stop to discuss it; but I commend to the Senator what I think would be a very good reason for it.

Mr. NELSON. I will simply say that I am glad the Senator has excluded it, because, in my mind, that was the worst feature of it. The language is:

SEC. —. That nothing in the act to regulate commerce, approved February 4, 1887, or in the act to protect trade and commerce against unlawful restraints and monopolies, approved July 2, 1890—

That is the Sherman antitrust law—

or in any act amendatory of either of said acts, shall hereafter apply to the establishment of rates or the changing or publication of the same with respect to foreign commerce, or shall prohibit any necessary and reasonable agreement of two or more carriers with respect to rates or charges and the maintenance and observance of the same for interstate transportation that is not in unreasonable restraint of trade or commerce with foreign nations or among the several States.

But, leaving out that part of it, the objection, as I said, to the other portion of the amendment which the Senator from Ohio has offered is that it would be entirely in contravention of the spirit and purpose of this act, which proposes to give the rate-making power to the Interstate Commerce Commission in the first instance, and then to allow their action to be subsequently reviewed. This proposes to have the court, upon complaint of a shipper, investigate the question and pass upon the rate as to whether it is too high or too low; and if too high, to scale it down; so that if a rate of a dollar a hundred is complained of, the court can scale it down and say: "We find 75 cents a hundred is a reasonable rate, and we will enjoin all in excess of that." Then there is no limitation as to the period of time the court may enjoin the rate.

Mr. FORAKER. Mr. President, I do not wish to reply to the Senator from Minnesota, but I wish to ask him a question, if he will yield for that purpose.

Mr. NELSON. Certainly.

Mr. FORAKER. I want simply to say to him that, so far as the power of the court to enjoin a rate is concerned, I have followed the decisions in 7 Federal Reporter, in 8 Federal Reporter, in 123 Federal Reporter, in 186 United States Reports, 174 Massachusetts Reports, and in a number of other cases.

But the question I want to ask the Senator from Minnesota is, why should not the shipper have the right to have his case proceeded with in the courts, where there is only one hearing, and without any expense at all, rather than compel him to have two hearings at his own expense, as now?

Mr. NELSON. For the reason that the rate-making power is not invested in the courts, in the first instance, but belongs to the Interstate Commerce Commission. That is the objection to it.

Mr. FORAKER. If the Senator will allow me, there is no rate-making power whatever conferred on the court here. The court is authorized to hear and determine what is a just and reasonable rate, which is the lawful rate prescribed by the statute; and if the carrier was charging any more than the lawful rate the court is authorized to enjoin all in excess of it; in other words, not to make a rate, but to give effect to a rate which Congress has made.

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Mr. FORAKER. Before the amendment is voted on I wish to make some remarks applicable to this general proposition. I

do not want to oppose specifically the amendment the Senator from West Virginia has offered, but I do want to oppose the proposition to increase the number of Interstate Commerce Commissioners. I call attention, in the first place, to Appendix M of the hearings before the Interstate Commerce Committee of the Senate, and I ask that it may be embodied in the RECORD, without reading, as a part of my remarks.

The VICE-PRESIDENT. Without objection, it is so ordered. Appendix M is as follows:

APPENDIX M.—*Hearings before the Committee on Interstate Commerce, United States Senate, in special session, pursuant to Senate resolution No. 288, Fifty-eighth Congress, third session.*

TABLE FURNISHED BY THE INTERSTATE COMMERCE COMMISSION IN RESPONSE TO A LETTER OF SENATOR ELKINS, DATED JUNE 8, 1905, SHOWING THE FOLLOWING FACTS RELATIVE TO FORMAL COMPLAINTS BEFORE THE COMMISSION: (1) TITLE OF CASE, (2) DATE FILED, (3) DATE SUBMITTED, (4) DATE DECIDED, (5) COMPLIANCE OR NONCOMPLIANCE BY CARRIERS, AND (6) DATE SUIT WAS INSTITUTED IN CIRCUIT COURTS.

INTERSTATE COMMERCE COMMISSION,  
Washington, November 21, 1905.

Hon. S. B. ELKINS,

*Chairman Committee on Interstate Commerce,  
United States Senate, Washington, D. C.*

SIR: Complying with the request as set forth in your letter of June 8 for a statement showing, with reference to cases decided by the Commission—

1. Date of the application for relief.
2. Date of the argument after evidence has been taken.
3. Date of the decision of the Commission.
4. Whether the decision was obeyed by the carrier.

5. If not obeyed, whether a proceeding was instituted to enforce the decision; and if so, the date when such proceeding was instituted—the Commission has had the information compiled in the form of a table, which is inclosed. The table shows the date when each complaint was filed; the date when each case was finally submitted upon hearing of testimony simply or upon argument or briefs; the date of the decision of the Commission; whether the decision was obeyed; and if not, when any proceeding to enforce the order was commenced in the circuit court.

Very respectfully,

MARTIN A. KNAPP, *Chairman.*

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
W. M. Holbrook et al. v. St. Paul, Minneapolis and Manitoba R. R.	Apr. 18, 1887	July 6, 1887	July 14, 1887	Complaint dismissed.	.....	
M. A. Fulton v. Chicago, St. Paul, Minneapolis and Omaha R. R.	Apr. 26, 1887	July 14, 1887	July 20, 1887	.....do	.....	
Ralph W. Thacher v. Delaware and Hudson Canal Co. et al.	Apr. 23, 1887	July 21, 1887	July 25, 1887	.....do	.....	
Nathaniel W. Howell v. New York, Lake Erie and Western R. R. et al.	.....do	May 13, 1888	Sept. 24, 1888	.....do	.....	
Burton Stock Car Co. v. Chicago, Burlington and Quincy Rwy. et al.	May 6, 1887	June 23, 1887	July 25, 1887	No order issued.	.....	
F. D. Harding v. Chicago, St. Paul, Minneapolis and Omaha Rwy.	May 18, 1887	July 14, 1887	July 20, 1887	Complaint dismissed.	.....	
Associated Wholesale Grocers v. Missouri Pacific Rwy. Co.	May 19, 1887	July 22, 1887	July 25, 1887	.....do	.....	
Traders and Travelers' Union v. Philadelphia and Reading R. R. Co. et al.	May 21, 1887	July 15, 1887	.....do	.....do	.....	
Leverett Leonard v. Union Pacific R. R. Co.	.....do	Oct. 18, 1887	Oct. 18, 1887	.....do	.....	
Chicago and Alton R. R. Co. v. Pennsylvania R. R. Co.	May 23, 1887	June 16, 1887	July 14, 1887	.....do	.....	
Chicago and Alton R. R. Co. v. Pennsylvania Co. Chicago, Rock Island and Pacific Rwy. Co. v. New York Central and Hudson River R. R.	.....do	.....do	.....do	.....do	.....	
Boston and Albany R. R. Co. v. Boston and Lowell R. R. Co. et al.	May 24, 1887	Sept. 3, 1887	Sept. 20, 1887	Order complied with.	.....	
Do.	.....do	.....do	.....do	.....do	.....	
Providence Coal Co. v. Providence and Worcester R. R. Co.	May 25, 1887	June 19, 1887	July 23, 1887	.....do	.....	
Michigan Central R. R. Co. v. Chicago and Grand Trunk R. R. Co.	.....do	June 15, 1887	July 25, 1887	.....do	.....	
Louis Larrison v. Chicago and Grand Trunk R. R.	.....do	.....do	.....do	.....do	.....	
Keith & Wilson v. Kentucky Central R. R. Co. et al.	May 26, 1887	July 20, 1887	Oct. 21, 1887	.....do	.....	
E. B. Raymond v. Chicago, Milwaukee and St. Paul R. R. Co.	.....do	Sept. 13, 1887	Nov. 21, 1887	.....do	.....	

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
William H. Council v. Western and Atlantic R. R. Co.	May 21, 1887	Aug. 5, 1887	Dec. 3, 1887	Order not complied with.	.....	Complainant subsequently began suit for damages. The controversy was settled between the parties, but the commission has not been notified how the compromise was effected.
George M. Jackson v. St. Louis, Arkansas and Texas Rwy. Co.	June 8, 1887	Oct. 12, 1887	Oct. 12, 1887	Complaint dismissed.	.....	
B. S. Crews et al. v. Richmond and Danville R. R. Co. et al.	.....do.....	Nov. 15, 1887	Feb. 15, 1888	.....do.....	.....	
Boards of Trade Union of Farmington et al. v. Chicago, Milwaukee and St. Paul R. R. Co.	June 11, 1887	Sept. 14, 1887	Nov. 2, 1887	Order complied with.	.....	
W. U. Smith v. Northern Pacific R. R. Co.	June 13, 1887	Oct. 4, 1887	Nov. 1, 1887	.....do.....	.....	
Milton Evans v. Oregon Rwy. and Navigation Co.	June 15, 1887	Oct. 12, 1887	Dec. 3, 1887	.....do.....	.....	
William H. Reed v. Oregon Rwy. and Navigation Co.	June 21, 1887	.....do.....	.....do.....	.....do.....	.....	
I. Friend & Son v. Southern Pacific Co. et al.	June 24, 1887	Mar. 22, 1888	Aug. 31, 1888	Complaint dismissed.	.....	
David F. Allen et al. v. Louisville, New Albany and Chicago Rwy. Co.	June 30, 1887	Sept. 20, 1887	Oct. 31, 1887	.....do.....	.....	
Adolph Ottinger v. Southern Pacific Co.	July 5, 1887	July 23, 1887	July 23, 1887	.....do.....	.....	
William H. Heard v. Georgia R. R. Co.	July 6, 1887	Dec. 15, 1887	Feb. 15, 1888	Order not complied with.	Nov., 1891	
W. O. Harwell et al. v. Columbus and Western R. R. Co. et al.	.....do.....	Oct. 19, 1887	Dec. 3, 1887	Order complied with.	.....	
Associated Wholesale Grocers v. Missouri Pacific Rwy.	July 7, 1887	July 22, 1887	July 25, 1887	Complaint dismissed.	.....	
George Rice v. Louisville and Nashville R. R. Co.	July 22, 1887	Jan. 18, 1888	Feb. 23, 1888	Order complied with.	.....	
George Rice v. St. Louis, Iron Mountain and Southern Rwy. Co.	.....do.....	.....do.....	.....do.....	.....do.....	.....	



George Rice v. Mobile and Ohio R. R. Co.	do	do	do	do	do
George Rice v. Cincinnati, New Orleans and Texas Pacific Rwy.	do	do	do	do	do
George Rice v. Cincinnati, New Orleans and Texas Pacific Rwy., et al.	do	do	do	do	do
George Rice v. Mississippi and Tennessee R. R. Co.	do	do	do	do	do
George Rice v. Newport News and Mississippi Valley Co. et al.	do	do	do	do	do
do	do	do	do	do	do
George Rice v. Illinois Central R. R. Co.	do	do	do	do	do
Boston Chamber of Commerce v. Lake Shore and Michigan Southern Rwy., et al.	do	Nov. 17, 1887	Feb. 15, 1888	do	Complaint dismissed.
Boston Chamber of Commerce v. Lake Shore and Michigan Southern Rwy.	do	do	do	do	do
Boston Chamber of Commerce v. New York Central and Hudson River R. R. Co.	do	do	do	do	do
F. B. Thurber et al. v. New York Central and Hudson River R. R. et al.	Aug. 1, 1887	Feb. 12, 1889	Mar. 14, 1890	do	Order complied with.
Thomas L. Greene v. New York Central and Hudson River R. R. et al.	do	do	do	do	do
Francis H. Leggett & Co. v. Baltimore and Ohio Railroad Co. et al.	do	do	do	do	do
Vermont State Grange v. Boston and Lowell R. R. Co. et al.	Aug. 5, 1887	Sept. 3, 1887	Sept. 20, 1887	do	do
Business Men's Association of Minnesota v. Chicago and Northwestern Rwy. Co.	Sept. 3, 1887	Mar. 19, 1888	June 20, 1888	do	Complaint dismissed.
Business Men's Association of Minnesota v. Chicago, St. Paul, Minneapolis and Omaha R. R. et al.	Sept. 5, 1887	do	do	do	do
Manufacturers and Jobbers' Union of Mankato v. Minneapolis and St. Louis Rwy. Co.	do	Dec. 17, 1888	June 14, 1890	do	No order issued.
James C. Savery & Co. v. New York Central and Hudson River R. R. et al.	do	July 20, 1888	Nov. 9, 1888	do	Complaint dismissed.
John D. Heck et al. v. East Tennessee, Virginia and Georgia Rwy., et al.	Sept. 8, 1887	Dec. 9, 1887	Feb. 15, 1888	do	Order complied with.
Raymond Bros. & Co. v. Burlington and Missouri River R. R. Co. et al.	Sept. 22, 1887	Mar. 22, 1888	Aug. 31, 1888	do	Complaint dismissed.
William C. Scofield et al. v. Lake Shore and Michigan Southern Rwy.	Sept. 27, 1887	May 2, 1888	July 19, 1888	do	Order complied with.
Plummer, Perry & Co. v. Union Pacific Rwy. Co. et al.	Oct. 3, 1887	Mar. 22, 1888	Aug. 31, 1888	do	Complaint dismissed.

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
John H. Martin and M. H. Martin v. Southern Pacific Co. et al.	Oct. 4, 1887	Dec. 19, 1887	May 17, 1888	No order issued	.....	
W. B. Farrar & Co. v. East Tennessee, Virginia and Georgia Rwy. Co. et al.	Oct. 12, 1887	Jan. 11, 1888	Feb. 15, 1888	Order complied with.	.....	
James Pyle & Sons v. East Tennessee, Virginia and Georgia Rwy. Co.	Oct. 14, 1887	Dec. 8, 1887	.....do	.....do	.....	
T. J. Reynolds v. Western New York and Pennsylvania Rwy. Co.	Oct. 17, 1887	Dec. 7, 1887	Jan. 13, 1888	.....do	.....	
Riddle, Dean & Co. v. Baltimore and Ohio R. R. Co.	Oct. 19, 1887	Feb. 1, 1888	Feb. 23, 1888	Complaint dismissed.	.....	
Riddle, Dean & Co. v. Pittsburg and Lake Erie R. R. Co.	.....do	Dec. 8, 1887	Jan. 17, 1888	.....do	.....	
Lincoln Board of Trade v. Burlington and Missouri River R. R. Co.	Nov. 11, 1887	May 23, 1888	Aug. 11, 1888	.....do	.....	
Lincoln Board of Trade v. Missouri Pacific Rwy. Co.	.....do	.....do	.....do	.....do	.....	
New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific R. R.	.....do	Mar. 6, 1888	Nov. 26, 1888	Order complied with.	.....	
Euclid Martin et al. v. Chicago, Burlington and Quincy R. R. et al.	Nov. 16, 1887	Apr. 10, 1888	June 19, 1888	Complaint dismissed.	.....	
Riddle, Dean & Co. v. New York, Lake Erie and Western R. R. et al.	Nov. 26, 1887	Feb. 1, 1888	Feb. 24, 1888	No action by carriers necessary.	.....	
John H. Nicolai v. Pennsylvania R. R. Co. ....	Nov. 28, 1887	Apr. 24, 1888	July 23, 1888	Order not complied with.	.....	Suits for damages decided adversely to complainants, Do.
J. Parkhurst & Co. v. Pennsylvania R. R. Co. ....	.....do	.....do	.....do	.....do	.....	
Delaware State Grange v. New York, Philadelphia and Norfolk R. R. Co.	Dec. 2, 1887	May 4, 1890	Apr. 13, 1891	.....do	Aug., 1892	
Detroit Board of Trade v. Grand Trunk Rwy. Co. et al.	Dec. 11, 1887	July 31, 1888	Oct. 22, 1888	Complaint dismissed.	.....	
In the Matter of the Express Business.....	Apr. 4, 1887	Oct. 25, 1887	Dec. 28, 1887	No order issued	.....	
Kentucky and Indiana Bridge Company v. Louisville and Nashville R. R. Co.	Feb. 10, 1888	Mar. 29, 1888	Aug. 2, 1888	Order not complied with.	Sept., 1888	
Rice, Robinson & Withrop v. Western New York and Pennsylvania Rwy. Co. et al.	Feb. 18, 1888	Feb. 22, 1890	Sept. 5, 1890	Order complied with.	.....	

Chamber of Commerce of Milwaukee <i>v.</i> Flint and Pere Marquette R. R. Co. et al.	Feb. 21, 1888	Dec. 5, 1888	Feb. 19, 1889	Complaint dismissed.	
William P. Rend <i>v.</i> Chicago and Northwestern Rwy. Co.	Mar. 19, 1888	Oct. 22, 1888	Jan. 26, 1889	.....do	
Michigan Congress Water Co. <i>v.</i> Chicago and Grand Trunk Rwy. Co.	Mar. 26, 1888	Feb. 5, 1889	Mar. 23, 1889	.....do	
Worcester Excursion Car Co. <i>v.</i> Pennsylvania R. R. Co.	Apr. 3, 1888	Oct. 15, 1888	Apr. 23, 1890	.....do	
New York Produce Exchange <i>v.</i> New York Central and Hudson River R. R. Co. et al.	Apr. 18, 1888	Aug. 18, 1888	June 19, 1889	Order complied with.	
Henry McMoran & Co. <i>v.</i> Chicago and Grand Trunk Rwy. Co. et al.	Apr. 21, 1888	Apr. 15, 1889	Sept. 25, 1889	.....do	
T. M. C. Logan et al. <i>v.</i> Chicago and Northwestern Rwy. Co.	May 8, 1888	July 26, 1888	Mar. 22, 1889	.....do	
Frank L. Hurlburt <i>v.</i> Pennsylvania R. R. Co.	.....do	July 17, 1888	July 20, 1888	.....do	
Frank L. Hurlburt <i>v.</i> Lake Shore and Michigan Southern Rwy. Co.	.....do	.....do	.....do	.....do	
Spartanburg Board of Trade <i>v.</i> Richmond and Danville R. R. Co. et al.	May 9, 1888	July 20, 1888	Oct. 8, 1888		
C. H. Griffee <i>v.</i> Burlington and Missouri R. R. Co. in Nebraska.	May 10, 1888	July 27, 1888	.....do	Complaint dismissed.	
New Jersey Fruit Exchange <i>v.</i> Central R. R. Co. of New Jersey et al.	May 17, 1888	July 11, 1888	July 23, 1888	.....do	
Imperial Coal Co. et al. <i>v.</i> Pittsburg and Lake Erie R. R. Co. et al.	May 28, 1888	Jan. 11, 1889	Mar. 23, 1889	.....do	
James F. Slater <i>v.</i> Northern Pacific R. R. Co.	June 6, 1888	July 27, 1888	Nov. 23, 1888	.....do	
In re Chicago, St. Paul and Kansas City Rwy. Co.	.....do	Aug. 21, 1888	Sept. 19, 1888	Order complied with.	
Little Rock and Memphis R. R. Co. <i>v.</i> East Tennessee, Virginia and Georgia R. R. Co. et al.	Aug. 29, 1888	Jan. 14, 1889	Mar. 25, 1889	Complaint dismissed.	
Hostetter & Co. <i>v.</i> Pennsylvania Co. et al.	Sept. 12, 1888	Feb. 11, 1889	Feb. 23, 1889	.....do	
Stone & Carten <i>v.</i> Detroit, Grand Haven and Milwaukee Rwy. Co.	Sept. 24, 1888	Jan. 29, 1889	Apr. 26, 1890	Order not complied with.	Nov., 1891
Coxe Brothers & Co. <i>v.</i> Lehigh Valley R. R. Co.	Oct. 19, 1888	Apr. 12, 1889	Mar. 31, 1891	.....do	May, 1891
In re Tariffs and Classifications of Atlanta and West Point R. R. Co. et al.	Oct. 22, 1888	Dec. 20, 1888	Mar. 30, 1889	Order complied with.	

Decision of Commission continued case indefinitely, unless further proof should be submitted by the parties.

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
In re Tariffs of the Trans-Continental Lines. Independent Refiners' Association v. Western New York and Pennsylvania R. R. Co. et al.	Sept. 1, 1888 Dec. 4, 1888	Oct. 24, 1888 Sept. 23, 1891	Oct. 24, 1888 Nov. 14, 1892	No order issued. Order not complied with.	May, 1896	Delay to bring suit in court caused by time taken up in proving damage claims. Do.
Do. Putnam P. Bishop v. Florida Rwy. and Navigation Co. James A. Harris v. Florida Rwy. and Navigation Co. et al.	do. Dec. 17, 1888 do.	Sept. 16, 1891 May 1, 1889 do.	do. May 1, 1889 do.	do. Complaint dismissed. do.	do.	
L. Lippman & Co. v. Illinois Central R. R. Co. John P. Squire & Co. v. Michigan Central R. R. Co. et al.	Dec. 1, 1888 Jan. 19, 1889	June 4, 1890	Jan. 3, 1889 Apr. 21, 1891	No order. Order complied with.		
William L. Rawson v. Newport News and Mississippi Valley Co. In re Passenger Tariffs and Rate Wars.	Jan. 22, 1889	June 20, 1889	Nov. 13, 1889	Complaint dismissed.		
Independent Refiners' Association v. Pennsylvania Railroad Co. et al.	Jan. 30, 1889	Dec. 11, 1888 Sept. 16, 1891	Jan. 25, 1889 Nov. 14, 1892	No order issued. Order not complied with.	May, 1896.	Do.
William H. Heard v. Georgia R. R. Co. James & Abbott v. East Tennessee, Virginia and Georgia Rwy. Co.	Feb. 9, 1889 Feb. 18, 1889	Apr. 10, 1889 May 2, 1889	May 8, 1889 Sept. 25, 1889	do. Order complied with.	Nov., 1891.	
Board of Trade of Chicago v. Chicago and Alton R. R. Co. et al.	Feb. 27, 1889	Nov. 11, 1889	Oct. 16, 1890	do.		
Abiel Leonard v. Chicago and Alton R. R. Co. Logan B. Chappelle v. Chicago and Alton R. R. Co.	Mar. 14, 1889 do.	Aug. 15, 1889 do.	Sept. 25, 1889 do.	No order issued. do.		
New Orleans Cotton Exchange v. Illinois Central R. R. Co. In re Passenger Tariffs.	Mar. 18, 1889 do.	Nov. 12, 1889 Mar. 21, 1889	Apr. 11, 1890 Mar. 27, 1889	Order complied with. No order issued.		
New Orleans Cotton Exchange v. Louisville, New Orleans and Texas R. R. Co. George Rice v. Cincinnati, Washington and Baltimore R. R. Co. et al.	Mar. 26, 1889 do.	July 3, 1889 June 9, 1890	Mar. 28, 1891 Apr. 9, 1892	Order complied with. Order partially complied with.		

Do.....	do.....	May 13, 1890	do.....	do.....	do.....	Suit to enforce order instituted by complainants.
In re Tariff of the Grand Trunk Rwy. of Canada	do.....	May 13, 1890	do.....	Apr. 16, 1889	Order complied with.	
Charles H. Brownell v. Columbus and Cincinnati Midland R. R. Co.	Mar. 29, 1889	Apr. 5, 1889	do.....	Apr. 1, 1893	Complaint dismissed.	
Toledo Produce Exchange et al. v. Lake Shore and Michigan Southern Rwy. Co. et al.	Apr. 1, 1889	Sept. 30, 1889	do.....	Apr. 6, 1892	Order complied with.	
Merchants' Union of Spokane Falls v. Northern Pacific R. R. Co.	Apr. 2, 1889	Sept. 7, 1892	do.....	Nov. 28, 1892	Order not complied with.	—, 1894
George Rice v. Louisville and Nashville R. R. Co.	Apr. 26, 1889	May 13, 1890	do.....	Apr. 9, 1892	Order partially complied with.	
New Orleans Cotton Exchange v. Cincinnati, New Orleans and Texas Pacific Rwy. Co. et al.	May 4, 1889	July 8, 1889	do.....	Apr. 11, 1890	Order complied with.	
Maj. J. P. Sauger v. Southern Pacific Rwy. Co. et al.	Apr. 27, 1889	May 31, 1889	do.....	June 24, 1889	do.....	
Hazel Milling Co. v. St. Louis, Alton and Terre Haute R. R. Co.	May 17, 1889	May 15, 1891	do.....	Dec. 15, 1891	do.....	
San Bernardino Board of Trade v. Atchison, Topeka and Santa Fe R. R. Co. et al.	May 21, 1889	Feb. 5, 1890	do.....	July 19, 1890	Order not complied with.	Apr., 1891
Frederick A. White v. Michigan Central R. R. Co. et al.	May 27, 1889	Sept. 30, 1889	do.....	Dec. 1, 1889	Complaint dismissed.	
John Livingston v. New York, Lake Erie and Western R. R. Co. et al.	June 10, 1889	Dec. 20, 1889	do.....	Jan. 18, 1890	do.....	
Lehmann, Higginson & Co. v. Texas and Pacific Rwy. Co. et al.	June 17, 1889	Mar. 19, 1890	do.....	Nov. 30, 1891	Order partially complied with.	
Lehmann, Higginson & Co. v. Southern Pacific Rwy. Co. et al.	do.....	do.....	do.....	May 22, 1890	Complaint dismissed.	
Lehmann, Higginson & Co. v. Southern Pacific R. R. Co. et al.	do.....	do.....	do.....	do.....	do.....	
Lehmann Higginson & Co. v. Central Pacific Rwy. Co. et al.	do.....	Mar. 3, 1890	do.....	do.....	do.....	
John Livingston v. Delaware, Lackawanna and Western R. R. Co. et al.	June 29, 1889	Oct. 9, 1889	do.....	Jan. 18, 1890	do.....	
Pennsylvania Co. v. Louisville, New Albany and Chicago Rwy. Co.	July 10, 1889	Sept. 17, 1889	do.....	Sept. 17, 1889	do.....	
Chicago, St. Louis and Pittsburgh R. R. Co. v. Cleveland, Cincinnati, Chicago and St. Louis R. R. Co.	do.....	do.....	do.....	do.....	do.....	
Pittsburg, Cincinnati and St. Louis Rwy. Co. v. Baltimore and Ohio R. R. Co.	do.....	Jan. 13, 1890	do.....	Feb. 21, 1890	Order not complied with.	May, 1890..



Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
George Rice <i>v.</i> Atchison, Topeka and Santa Fe R. R. Co. et al.	July 22, 1889	Nov. 19, 1890	Apr. 9, 1892	Order partially complied with.	.....	
Bennet D. Mattingly <i>v.</i> Pennsylvania Co. ....	Aug. 1, 1889	Nov. 18, 1889	Apr. 25, 1890	Complaint dismissed.	.....	
George D. Sidman <i>v.</i> Piedmont Air Line R. R. Co.	Aug. 5, 1889	Feb. 10, 1890	Apr. 5, 1890	.....do.....	.....	
Poughkeepsie Iron Co. <i>v.</i> New York Central and Hudson River R. R. Co. et al.	.....do.....	July 12, 1890	Oct. 20, 1890	.....do.....	.....	
Chicago, Rock Island and Pacific Rwy. Co. <i>v.</i> Chicago and Alton R. R. Co.	Aug. 7, 1889	Oct. 5, 1889	Feb. 14, 1890	.....do.....	.....	
D. S. Alford <i>v.</i> Chicago, Rock Island and Pacific Rwy. Co.	Aug. 9, 1889	Dec. 12, 1889	Apr. 9, 1890	.....do.....	.....	
Harvey Bates et al. <i>v.</i> Pennsylvania R. R. Co. et al.	Aug. 29, 1889	Apr. 10, 1890	Nov. 22, 1890	Former order vacated; no other order issued.	.....	
American Wire Nail Co. <i>v.</i> Cincinnati, New Orleans and Texas Pacific Rwy. Co. et al.	Aug. 31, 1889	Sept. 17, 1889	Sept. 18, 1889	Complaint dismissed.	.....	
Procter & Gamble <i>v.</i> Cincinnati, Hamilton and Dayton R. R. Co. et al.	Sept. 12, 1889	Feb. 18, 1890	July 17, 1890	Order complied with.	.....	
Procter & Gamble <i>v.</i> Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....	
Procter & Gamble <i>v.</i> Cincinnati, Washington and Baltimore Rwy. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....	
John Livingston <i>v.</i> New York, Lake Erie and Western R. R. Co.	.....do.....	.....do.....	.....do.....	.....do.....	.....	
Hulbert H. Warner <i>v.</i> New York Central and Hudson River R. R. Co. et al.	Sept. 14, 1889	Dec. 19, 1889	Jan. 18, 1890	Complaint dismissed.	.....	
E. M. Kaworth <i>v.</i> Northern Pacific R. R. Co. et al.	Sept. 25, 1889	Dec. 22, 1891	May 21, 1890	Order complied with.	.....	
Andrews Soap Company <i>v.</i> Pittsburg, Cincinnati and St. Louis Rwy. Co. et al.	Oct. 5, 1889	Mar. 5, 1890	Apr. 13, 1892	Order not complied with.	Aug., 1892	
W. S. King & Co. <i>v.</i> New York, New Haven and Hartford R. R. Co. et al.	Oct. 10, 1889	May 21, 1890	May 31, 1890	Complaint dismissed.	.....	
Harvard Co. <i>v.</i> Pennsylvania Co. et al.	Oct. 12, 1889	Feb. 26, 1890	Oct. 30, 1890	.....do.....	.....	
James & Mayer Buggy Co. <i>v.</i> Cincinnati, New Orleans and Texas Pacific Rwy. Co. et al.	Oct. 18, 1889	June 9, 1890	Oct. 23, 1890	Order complied with.	.....	
S. C. Capehart et al. <i>v.</i> Nashville, Chattanooga and St. Louis Rwy. Co. et al.	Oct. 30, 1889	June 18, 1890	June 29, 1891	Order not complied with.	Oct., 1891	
			Nov. 3, 1890	Complaint dismissed.	.....	

New York Board of Trade and Transportation v. Pennsylvania R. R. Co. et al.	Dec. 3, 1889	Oct. 16, 1890	Jan. 29, 1891	Order not complied with.	Jan., 1892
William H. Harvey v. Louisville and Nashville R. R. Co.	Dec. 21, 1889	July 5, 1891	Feb. 12, 1892	Order complied with.	.....
Edward Kemble v. Lake Shore and Michigan Southern Rwy. Co. et al.	Jan. 18, 1890	Apr. 28, 1891	Apr. 6, 1892	.....do	.....
P. H. Loid, Jr., v. South Carolina Rwy. Co. et al.	Feb. 13, 1890	Apr. 26, 1892	Dec. 24, 1892	Complaint dismissed.	.....
In re Investigation of Rates and Food Products from Western Points to the Seaboard.	Mar. 12, 1890	.....	July 19, 1890	Order partially complied with.	.....
Kauffmann Milling Co. v. Missouri Pacific Rwy. Co. et al.	Mar. 28, 1890	Nov. 18, 1890	Nov. 30, 1890	Order complied with.	.....
Chattanooga Board of Trade v. East Tennessee, Virginia and Georgia Rwy. Co. et al.	Apr. 9, 1890	Feb. 11, 1891	Dec. 30, 1892	Order not complied with.	Apr., 1893
Fruit and Produce Merchants of Boston v. New York and New England R. R. Co. et al.	May 17, 1890	Oct. 23, 1890	Mar. 19, 1891	Order partially complied with.	.....
Hamilton & Brown v. Chattanooga, Rome and Columbus R. R. Co. et al.	May 22, 1890	Jan. 16, 1891	Mar. 19, 1891	Order complied with.	.....
John C. Haddock v. Delaware, Lackawanna and Western R. R. Co.	June 21, 1890	Nov. 13, 1890	Nov. 30, 1890	No order issued	.....
Jacob Shamburg v. Delaware, Lackawanna and Western R. R. Co. et al.	July 7, 1890	Jan. 30, 1891	Apr. 25, 1891	Order not complied with.	.....
Eau Claire Board of Trade v. Chicago, Milwaukee and St. Paul Rwy. Co.	.....do	Nov. 19, 1891	June 17, 1892	Order partially complied with.	.....
New York and Northern Rwy. Co. v. New York and New England R. R. Co. et al.	July 12, 1890	Dec. 15, 1890	May 6, 1891	Order not complied with.	—, 1891
Blanton Duncan v. Atchison, Topeka and Santa Fe R. R. Co. et al.	Sept. 6, 1890	Aug. 24, 1892	Nov. 3, 1893	Order complied with.	.....
Blanton Duncan v. Southern Pacific Co. et al.	.....do	Sept. 26, 1892	.....do	.....do	.....
Beaver & Co. v. Pittsburg, Cincinnati and St. Louis Rwy. Co. et al.	Oct. 18, 1890	Feb. 21, 1891	May 16, 1891	.....do	.....
William H. Macdon v. Chicago and Northwestern Rwy. Co.	Dec. 1, 1890	Oct. 19, 1891	Jan. 12, 1892	Complaint dismissed.	.....
A. J. Gustin v. Burlington and Missouri River R. R. in Nebraska et al.	Dec. 13, 1890	June 3, 1897	Mar. 9, 1900	Order not complied with.	June, 1900
Railroad Commission of Florida v. Savannah, Florida and Western Rwy. Co. et al.	Dec. 30, 1890	Aug. 27, 1891	Oct. 29, 1891	.....do	Dec., 1891
Charles P. Perry v. Florida Central and Peninsular R. R. Co. et al.	Jan. 5, 1891	Oct. 30, 1891	Jan. 28, 1892	Order partially complied with.	.....

Case covered by similar case in United States court.

Suit to enforce order instituted by complainants.

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
J. M. Rising et al. v. Savannah, Florida and Western Rwy. Co. et al.	Jan. 21, 1891	Sept. 28, 1891	Jan. 28, 1892	Order partially complied with.	.....	.....
Lincoln Creamery v. Union Pacific Rwy. Co. ....	Feb. 14, 1891	June 16, 1891	Feb. 13, 1892	Complaint dismissed.	.....	.....
C. O. Morrell v. Union Pacific Rwy. Co. ....	Feb. 16, 1891	Oct. 19, 1891	Dec. 22, 1893	Order partially complied with.	.....	.....
A. S. Newland et al. v. Northern Pacific R. R. Co. et al.	Mar. 18, 1891	Oct. 5, 1891	Jan. 31, 1894	.....do.....	.....	.....
Murphy, Wasey & Co. v. Wabash R. R. et al. ....	Mar. 27, 1891	July 16, 1891	Jan. 30, 1892	.....do.....	.....	.....
F. Schumacher Milling Co. v. Chicago, Rock Island and Pacific Rwy. Co.	Apr. 1, 1891	Jan. 26, 1892	Oct. 20, 1893	Complaint dismissed.	.....	.....
Daniel Buchanan v. Northern Pacific R. R. Co. ....	Apr. 25, 1891	Oct. 5, 1891	Oct. 31, 1891	.....do.....	.....	.....
Michigan Box Co. v. Flint and Pere Marquette R. R. Co. et al.	June 1, 1891	May 20, 1893	July 24, 1895	No order issued.	.....	.....
Anthony Salt Co. v. Missouri Pacific Rwy Co. ....	May 29, 1891	Mar. 12, 1892	Apr. 23, 1892	Complaint dismissed.	.....	.....
Samuel Matthews v. Union Pacific Rwy. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....	.....
Samuel Matthews v. Atchison, Topeka and Santa Fe R. R. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....	.....
Edward E. Barton v. Chicago, Rock Island and Pacific Rwy. Co.	.....do.....	.....do.....	.....do.....	.....do.....	.....	.....
In re alleged unlawful charges for the transportation of coal by the Louisville and Nashville R. R. Co.	July 16, 1891	Apr. 16, 1892	Nov. 17, 1892	Order not complied with.	Mar., 1893	.....
In re Carriage of Persons Free or at Reduced Rates by the Boston and Maine R. R. Co.	.....do.....	Dec. 26, 1891	Dec. 29, 1891	Order complied with.	.....	.....
Gerke Brewing Co. v. Louisville and Nashville R. R. Co. et al.	Aug. 1, 1891	May 28, 1892	Feb. 28, 1893	Order not complied with.	Mar., 1893	.....
Potter Manufacturing Co. v. Chicago and Grand Trunk Rwy. Co. et al.	Oct. 17, 1891	Apr. 18, 1892	Dec. 9, 1892	Order complied with.	.....	.....
Georgia Railroad Commission v. Clyde Steamship Co. et al.	Oct. 22, 1891	Oct. 18, 1892	Nov. 11, 1892	Order not complied with.	May, 1893	.....
Georgia Railroad Commission v. Ocean Steamship Co. et al.	.....do.....	July 1, 1892	.....do.....	.....do.....	.....do.....	.....
Georgia Railroad Commission v. Cincinnati, New Orleans and Texas Pacific Rwy. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....	.....

Georgia Railroad Commission <i>v.</i> Western Atlantic R. Co. et al.	.....do.....	Oct. 18, 1892	.....do.....	.....do.....	.....do.....
George Rice <i>v.</i> St. Louis Southwestern Rwy. Co. et al.	Nov. 5, 1891	Mar. 28, 1893	May 18, 1893	Complaint dismissed.	.....do.....
George Rice <i>v.</i> Baltimore and Ohio Southwestern R. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
Freight Bureau of the Cincinnati Chamber of Commerce <i>v.</i> Cincinnati, New Orleans and Texas Pacific Rwy. Co. et al.	Dec. 26, 1891	.....do.....	May 29, 1894	Order not complied with.	Sept., 1894
Chicago Freight Bureau <i>v.</i> Louisville, New Albany and Chicago Rwy. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
Georgia Railroad Commission <i>v.</i> South Carolina Rwy. Co. et al.	Jan. 20, 1892	Oct. 18, 1892	Nov. 11, 1892	Complaint dismissed.	.....do.....
Georgia Railroad Commission <i>v.</i> Louisville and Nashville R. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
Georgia Railroad Commission <i>v.</i> Clyde Steamship Co. et al.	.....do.....	.....do.....	.....do.....	Order not complied with.	May, 1893
Tecumseh Celery Co. <i>v.</i> Cincinnati, Jackson and Mackinaw R. R. Co. et al.	Feb. 1, 1892	June 14, 1893	June 15, 1893	Order partially complied with.	.....do.....
Chamber of Commerce of Minneapolis <i>v.</i> Great Northern Rwy. Co. et al.	Feb. 3, 1892	Sept. 29, 1892	Jan. 3, 1893	Order not complied with.	July, 1893
Phelps & Co. <i>v.</i> Texas and Pacific Rwy. Co. et al.	Mar. 2, 1892	Aug. 18, 1893	Oct. 16, 1893	No disobedience reported.	.....do.....
James & Abbott <i>v.</i> Canadian and Pacific Rwy. Co. et al.	Mar. 21, 1892	Jan. 21, 1893	Mar. 11, 1893	Order complied with.	.....do.....
E. J. Daniels <i>v.</i> Chicago, Rock Island and Pacific Rwy. Co. et al.	Apr. 28, 1892	Aug. 22, 1893	Nov. 16, 1895	.....do.....	.....do.....
E. J. Daniels <i>v.</i> Great Northern Rwy. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
Freight Bureau of the Cincinnati Chamber of Commerce <i>v.</i> Cincinnati, New Orleans and Texas Pacific Rwy. Co. et al.	June 23, 1892	Mar. 23, 1897	May 22, 1897	Complaint dismissed.	.....do.....
Board of Trade of Troy, Ala., <i>v.</i> Alabama Midland Rwy. Co. et al.	June 29, 1892	May 1, 1893	Aug. 15, 1893	Order not complied with.	Jan., 1894
Thomas V. Cator <i>v.</i> Southern Pacific Co. et al.	Oct. 3, 1892	Nov. 7, 1893	Nov. 10, 1893	Complaint dismissed.	.....do.....
Cordele Machine Shop <i>v.</i> Louisville and Nashville R. R. Co. et al.	Oct. 4, 1892	Apr. 5, 1893	Oct. 19, 1895	Order partially complied with.	.....do.....
S. J. Hill & Bro. <i>v.</i> Nashville, Chattanooga and St. Louis Rwy. Co. et al.	Oct. 11, 1892	.....do.....	.....do.....	Order complied with.	.....do.....
Southern Paint and Glass Co. <i>v.</i> Lake Erie and Western R. R. Co. et al.	Oct. 13, 1892	Apr. 6, 1893	Feb. 1, 1895	Complaint dismissed.	.....do.....
Southern Paint and Glass Co. <i>v.</i> Baltimore and Ohio R. R. Co. et al.	Oct. 25, 1892	Apr. 13, 1893	.....do.....	.....do.....	.....do.....

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
George L. Castle v. Baltimore and Ohio R. R. Co. Edgar W. Emerson v. Chicago, Rock Island and Pacific Rwy. Co. Edgar W. Emerson v. Chicago and Northwestern Rwy. Co. H. W. Behlmer v. Memphis and Charleston R. R. Co. et al.	Oct. 28, 892 Oct. 31, 1892 .....do..... Dec. 29, 1892	Oct. 12, 1895 Apr. 9, 1894 July 16, 1894 June 27, 1893	Nov. 29, 1899 Apr. 1, 1895 Feb. 1, 1895 June 27, 1894	Complaint dismissed. .....do..... .....do..... Order not complied with.	..... ..... ..... —, 1894	Suit to enforce order instituted by complainant. Subsequently another order was issued, which was complied with.
Alanson S. Page et al. v. Delaware, Lackawanna and Western R. R. Co. et al.	Mar. 3, 1893	Sept. 8, 1893	Mar. 23, 1894	.....do.....	June, 1894	
In re Alleged Unlawful Charges for the Transportation of Vegetables and Strawberries from Charleston and Neighboring Points to New York and Other Points. Rhode Island Egg and Butter Co. et al. v. Lake Shore and Michigan Southern Rwy. Co. et al. In re Cincinnati, Hamilton and Dayton R. R. Co..	Mar. 14, 1893 Aug. 11, 1893 Aug. 2, 1893	June 3, 1894 May 11, 1894 Aug. 15, 1893	Apr. 6, 1895 May 26, 1894 Oct. 3, 1893	.....do..... Complaint dismissed. Order of relief under sec. 4 granted. .....do..... Complaint dismissed.	Jan., 1896 ..... ..... ..... .....	
In re Rome, Watertown and Ogdensburg..... W. H. Boyer & Co. v. Chesapeake, Ohio and Southwestern Rwy. Co. et al. W. L. Fewell v. Richmond and Danville R. R. Co. et al.	Sept. 27, 1893 Nov. 15, 1893 Feb. 15, 1895	Oct. 3, 1893 Feb. 15, 1897 Aug. 20, 1894	.....do..... Feb. 27, 1897 Aug. 20, 1897	.....do..... Complaint dismissed. Order not complied with.	..... ..... .....	
In re Alleged Unlawful Transportation Charges by the Illinois Central R. R. Co. New York, New Haven and Hartford R. R. Co. v. New York and New England R. R. Co. Milton Evans v. Union Pacific Rwy. Co. et al.... In re Tariffs and Classifications of the Pennsylvania R. R. Co. et al.	Mar. 27, 1894 May 10, 1894 June 15, 1894 June 23, 1894	Sept. 15, 1894 Mar. 13, 1895 Dec. 28, 1895 July 6, 1894	June 26, 1896 June 26, 1897 Feb. 8, 1896 Apr. 3, 1897	No order issued..... Order complied with. .....do..... Proceeding discontinued.	..... ..... ..... .....	



Supplemental  
report to that  
made in the  
Lynchburg  
Board of Trade  
case June 29,  
1896.

Board of Trade of the City of Lynchburg v. Old Dominion Steamship Co. et al.	June 29, 1894	June 3, 1895	June 29, 1896	Order complied with.	.....do.....	Supplemental report to that made in the Lynchburg Board of Trade case June 29, 1896.
Board of Trade of the City of Lynchburg v. Merchants and Miners' Transportation Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....	
A. J. Gustin v. Atchison, Topeka and Santa Fe R. R. Co. et al.	Aug. 25, 1894	July 3, 1897	Aug. 7, 1899	Complaint dismissed.	.....do.....	
A. J. Gustin v. Illinois Central R. R. Co. et al.	.....do.....	.....do.....	Oct. 19, 1897	.....do.....	.....do.....	
H. D. May v. Oregon Rwy. and Navigation Co.	Sept. 4, 1894	Nov. 22, 1895	Feb. 8, 1896	Order complied with.	.....do.....	
Charles M. Willson v. Rock Creek Rwy. Co.	Sept. 8, 1894	Mar. 15, 1895	Mar. 12, 1897	Complaint dismissed.	.....do.....	
Jerome Hill Cotton Co. v. Missouri, Kansas and Texas Rwy. Co.	Oct. 23, 1894	Apr. 20, 1895	May 20, 1896	Order partially complied with.	.....do.....	
Chamber of Commerce of Milwaukee v. Chicago, Milwaukee and St. Paul Rwy. Co. et al.	Nov. 6, 1894	May 27, 1895	Jan. 19, 1898	.....do.....	.....do.....	
Board of Railroad and Warehouse Commissioners of the State of Missouri v. Eureka Springs Rwy. Co.	Jan. 29, 1895	Apr. 19, 1895	Feb. 26, 1897	Order complied with.	.....do.....	
Wolf Bros. v. Allegheny Valley Rwy. Co. et al.	Feb. 2, 1895	Feb. 12, 1896	Jan. 28, 1897	Complaint dismissed.	.....do.....	
In re Fremont, Elkhorn and Missouri Valley R. R. Co. et al.	Feb. 11, 1895	Feb. 11, 1895	Feb. 11, 1895	Order of relief under sec. 4 granted.	.....do.....	
Colorado Fuel and Iron Co. v. Southern Pacific Co. et al.	Feb. 18, 1895	Aug. 8, 1895	Nov. 25, 1895	Order not complied with.	.....do.....	Mar., 1896
Phillips, Bailey & Co. v. Louisville and Nashville R. R. Co. et al.	Feb. 28, 1895	Sept. 18, 1897	Oct. 29, 1898	Order complied with.	.....do.....	
E. D. McClelen et al. v. Southern Rwy. Co. et al.	Mar. 7, 1895	Aug. 8, 1895	June 6, 1896	Order not complied with.	.....do.....	Nov., 1896
Do	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
D. K. Spillers & Co. v. Louisville & Nashville R. R. Co.	Mar. 8, 1895	Apr. 26, 1897	Nov. 29, 1899	.....do.....	.....do.....	
Commercial Club of Omaha v. Chicago and Northwestern Rwy. Co. et al.	Mar. 22, 1895	May 16, 1896	Nov. 18, 1897	Complaint dismissed.	.....do.....	
George J. Kindel v. Atchison, Topeka and Santa Fe R. R. Co. et al.	Mar. 22, 1895	July 23, 1900	Dec. 27, 1900	Order partially complied with.	.....do.....	
Commercial Club of Omaha v. Chicago, Rock Island and Pacific Rwy. Co. et al.	Mar. 25, 1895	May 16, 1896	Aug. 21, 1896	Order complied with.	.....do.....	
W. R. Rea v. Mobile and Ohio R. R. Co.	Mar. 27, 1895	Oct. 4, 1895	Feb. 24, 1897	.....do.....	.....do.....	

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
Johnston-Larimer Dry Goods Co. v. Atchison, Topeka and Santa Fe R. Co. et al.	Apr. 10, 1895	Jan. 4, 1896	May 12, 1896	Order partially complied with.	.....	
Listman Mill Co. v. Chicago, Milwaukee and St. Paul Rwy. Co.	May 4, 1895	June 25, 1896	Aug. 18, 1898	Complaint dismissed.	.....	
Milk Producers Protective Association v. Delaware, Lackawanna and Western R. R. Co. et al.	June 18, 1895	Jan. 8, 1897	Mar. 13, 1897	Order complied with.	.....	
In re Safety of Employees and Travelers upon Railroads Used in Interstate Commerce on Application of New York, Lake Erie and Western R. R. Co.	June 28, 1895	July 12, 1895	July 13, 1895	Time for placing grab irons and drawbars on cars extended.	.....	Petition of 9 other roads involved in this proceeding.
In re Rates Charged by Alabama Great Southern R. R. Co. et al.	Aug. 3, 1895	Apr. 14, 1896	Aug. 20, 1897	Order not complied with.	.....	
In re Alleged Violations of the Fourth Section by the Atchison, Topeka and Santa Fe R. Co. et al.	Oct. 22, 1895	Feb. 29, 1896	Mar. 1, 1897	No order issued.	.....	
Fuller E. Callaway v. Louisville and Nashville R. R. Co. et al.	Oct. 25, 1895	Mar. 25, 1897	Dec. 31, 1897	Order not complied with.	July, 1898	
Charles G. Freeman v. Atchison, Topeka and Santa Fe R. Co. et al.	Nov. 2, 1895	Apr. 4, 1896	May 28, 1897	Complaint dismissed.	.....	
J. W. Cary v. Eureka Springs Rwy. Co. et al.	Nov. 18, 1895	Oct. 29, 1896	Aug. 21, 1897	Order complied with.	.....	
Mount Vernon Milling Co. v. Chicago, Milwaukee and St. Paul Rwy. Co.	Dec. 4, 1895	July 23, 1896	May 28, 1897	Complaint dismissed.	.....	
Board of Railroad Commissioners of Kansas v. Atchison, Topeka and Santa Fe Rwy. Co. et al.	Mar. 10, 1896	May 6, 1898	Nov. 1, 1899	Order complied with.	.....	
Ridge Fruit and Melon Growers' Association v. Southern Rwy. Co. et al.	Apr. 4, 1896	July 3, 1896	May 19, 1898	Complaint dismissed.	.....	
Board of Railroad Commissioners of South Carolina v. Florence Railroad Co. et al.	Apr. 11, 1896	.....do.....	.....do.....	.....do.....	.....	
G. P. Allen et al. v. Carolina Midland Rwy. Co. et al.	May 8, 1896	.....do.....	.....do.....	.....do.....	.....	
Warren-Ehret Co. v. Central R. R. of New Jersey et al.	May 21, 1896	June 19, 1897	Dec. 22, 1900	Order complied with.	.....	
Suffern, Hunt & Co. v. Indiana, Decatur and Western Rwy. Co.	May 22, 1896	Nov. 30, 1896	July 1, 1897	.....do.....	.....	

Suffern, Hunt & Co. v. Indiana, Decatur and Western Rwy. Co. et al.	June 13, 1896	.....do.....	.....do.....	.....do.....	.....do.....
Paine Brothers & Co. v. Lehigh Valley R. R. Co. et al.	June 22, 1896	Sept. 17, 1896	June 24, 1897	Complaint dismissed.	.....do.....
In re Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the Atchison, Topeka and Santa Fe Rwy. Co. et al.	July 7, 1896	Oct. 15, 1896	Jan. 26, 1897	Order not complied with.	.....do.....
Savannah Bureau of Freight and Transportation v. Louisville and Nashville R. R. Co. et al.	Aug. 1, 1896	July 19, 1897	Jan. 8, 1900	.....do.....	June, 1900
Board of Railroad Commissioners of Kentucky v. Cincinnati, New Orleans and Texas Pacific Rwy. Co. et al.	Aug. 14, 1896	Apr. 27, 1897	Oct. 19, 1897	No order issued.	.....do.....
Dallas Freight Bureau v. Texas and Pacific Rwy. Co. et al.	Aug. 17, 1896	Dec. 29, 1897	June 23, 1898	Complaint dismissed.	.....do.....
Dallas Freight Bureau v. Austin and Northwestern R. R. Co. et al.	.....do.....	Dec. 16, 1897	Oct. 19, 1901	.....do.....	.....do.....
Cattle Raisers' Association of Texas v. Fort Worth and Denver City Rwy. Co. et al.	Sept. 1, 1896	Oct. 2, 1897	Jan. 20, 1898	Order not complied with.	Mar., 1899
Brewer & Hanleiter v. Louisville and Nashville R. R. Co. et al.	Sept. 3, 1896	May 24, 1897	June 29, 1897	.....do.....	—, 1897
New York Produce Exchange v. Baltimore and Ohio R. R. Co. et al.	Sept. 14, 1896	Dec. 15, 1897	Apr. 30, 1898	Complaint dismissed.	.....do.....
Board of Trade of Hampton, Fla. v. Nashville, Chattanooga and St. Louis Rwy. Co. et al.	Sept. 16, 1896	July 19, 1897	Mar. 10, 1900	Order not complied with.	Nov., 1900
Edward Kemble v. Boston and Albany R. R. Co. et al.	Oct. 17, 1896	Mar. 24, 1898	Mar. 7, 1899	Complaint dismissed.	.....do.....
Savannah Bureau of Freight and Transportation v. Charleston and Savannah Rwy. Co. et al.	Nov. 12, 1896	Aug. 12, 1897	Dec. 31, 1897	.....do.....	.....do.....
Edwin E. Montell v. Baltimore and Ohio R. R. Co. et al.	.....do.....	Mar. 26, 1897	.....do.....	.....do.....	.....do.....
Savannah Bureau of Freight and Transportation v. Charleston and Savannah Rwy. Co. et al.	Dec. 14, 1896	Apr. 7, 1897	Mar. 24, 1898	.....do.....	.....do.....
Grain Shippers' Association of Northwest Iowa v. Illinois Central R. R. Co. et al.	Feb. 3, 1897	Nov. 12, 1898	June 22, 1899	No order issued.	.....do.....
Holmes & Co. v. Southern Rwy. Co. et al.	Feb. 24, 1897	May 8, 1899	Nov. 13, 1900	Complaint dismissed.	.....do.....
Holmes & Co. v. Southern Rwy. Co. et al.	.....do.....	May 26, 1899	.....do.....	.....do.....	.....do.....
Chicago Fire Proof Covering Co. v. Chicago and Northwestern Rwy. Co. et al.	Mar. 9, 1897	July 20, 1897	Nov. 1, 1899	Order not complied with.	June, 1900

Suit to enforce order instituted by complainants.

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
In re Alleged Unlawful Charges for the Transportation of Vegetables from Shipping Points in Florida to New York and other Eastern Cities.	Mar. 9, 1897	Aug. 13, 1897	Dec. 14, 1900	No order issued	.....	
In re Alleged Unlawful Rates and Practices in the Transportation of Cotton by the Kansas City, Memphis and Birmingham R. R. Co. et al.	Mar. 13, 1897	Oct. 2, 1897	Mar. 27, 1899	.....do	.....	
American Warehousemen's Association v. Illinois Central R. R. Co. et al.	Apr. 27, 1897	Nov. 20, 1897	Feb. 3, 1898	Order complied with.	.....	
Trades League of Philadelphia v. Philadelphia Wilmington and Baltimore R. R. Co. et al.	May 7, 1897	May 10, 1898	Dec. 8, 1899	Complaint dismissed.	.....	
Pennsylvania Millers' State Association v. Philadelphia and Reading Rwy. Co. et al.	June 29, 1897	Apr. 1, 1898	Oct. 8, 1900	No order.	.....	
In re Alleged Violations of the Act to Regulate Commerce by the St. Louis and San Francisco Rwy. Co.	July 24, 1897	Sept. 18, 1897	Nov. 1, 1899	Order not complied with.	.....	
Board of Trade of the City of Dawson v. Central of Georgia Rwy. Co. et al.	Aug. 12, 1897	Feb. 21, 1899	Mar. 27, 1899	Order complied with.	.....	
In re Application of Certain Railroads for an Extension of Time for Equipping Freight cars with Automatic Couplers and Train Brakes under the Act Approved Mar. 2, 1893.	Sept. 30, 1897	Dec. 23, 1897	Dec. 23, 1897	Order granting extension of time for complying with safety-appliance act.	.....	Includes the applications of 304 railroads.
B. Brockway v. Ulster and Delaware R. R. Co. et al.	Oct. 22, 1897	Mar. 16, 1898	June 23, 1898	Complaint dismissed.	.....	
In re Application of Atchison, Topeka and Santa Fe Rwy. Co. et al.	Feb. 23, 1898	Feb. 24, 1898	Feb. 24, 1898	Relieving order granted under section 4.	.....	
Palmer's Dock Hay and Produce Board of Trade v. Pennsylvania R. R. Co.	Mar. 16, 1898	Apr. 20, 1901	Apr. 26, 1901	Complaint dismissed.	.....	
In re Alleged Disturbance in Passenger Rates by Canadian Pacific Rwy. Co.	July 14, 1898	Aug. 4, 1898	Aug. 31, 1898	Refusal to rescind former relieving order.	.....	
Wilmington Traffic Association v. Cincinnati, Portsmouth and Virginia R. R. Co. et al.	Nov. 5, 1898	Oct. 25, 1899	Dec. 17, 1901	Order not complied with.	Aug., 1902	
Thomas F. Sprigg et al. v. Baltimore and Ohio R. R. Co. et al.	Jan. 14, 1899	July 14, 1899	Mar. 2, 1900	Complaint dismissed.	.....	
City of Danville et al. v. Southern Rwy. Co. et al.	Feb. 18, 1899	June 28, 1900	Nov. 17, 1900	Order not complied with.	Apr., 1901	

In re Export Rates from Points East and West of the Mississippi River by the Baltimore and Ohio R. R. Co. et al.	Feb. 27, 1899	Apr. 7, 1899	Apr. 12, 1899	No order .....	.....
Hilton Lumber Co. v. Wilmington and Weldon R. R. Co. et al.	Mar. 10, 1899	Aug. 17, 1899	Apr. 10, 1901	No order issued.	.....
66 In re Relative Rates upon Export and Domestic Traffic in Grain and Grain Products and of the Publication of Tariffs Relating to such Traffic.	Apr. 13, 1899	July 24, 1899	Aug. 7, 1899	Order partially complied with.	.....
67 Shippers' Union of Phoenix, Ariz., v. Atchison, Topeka and Santa Fe Rwy. Co. et al.	May 16, 1899	Feb. 12, 1902	June 4, 1902	No order issued.	.....
68 George Tileston Milling Co. v. Northern Pacific Rwy. Co.	June 16, 1899	Oct. 6, 1899	Nov. 29, 1899	Order not complied with.	Jan., 1900
City of St. Cloud v. Northern Pacific Rwy. Co. ....	July 31, 1899	Oct. 27, 1899	.....do.....	.....do.....	.....do.....
Business Men's League of St. Louis v. Atchison, Topeka and Santa Fe Rwy. Co. et al.	Aug. 14, 1899	Feb. 4, 1902	Nov. 17, 1902	No order issued	.....
Charles H. Johnson v. Chicago, St. Paul, Minneapolis and Omaha Rwy. Co. et al.	Aug. 22, 1899	Nov. 21, 1900	May 7, 1902	Order complied with.	.....
James C. McGrew v. Missouri Pacific Rwy. Co. ....	Sept. 25, 1899	Jan. 21, 1901	Feb. 8, 1901	.....do.....	.....
In re Application of Certain Railroads for a further Extension of Time for Equipping Freight Cars with Automatic Couplers under the Act Approved Mar. 2, 1893.	Oct. 28, 1899	Dec. 19, 1899	Dec. 21, 1899	Order granting extension of time for complying with safety-appliance act.	.....
A. W. Holdzkorn v. Michigan Central R. R. Co. et al.	Jan. 22, 1900	Mar. 8, 1901	Apr. 13, 1901	Complaint dismissed.	.....
Spencer E. Carr v. Northern Pacific Rwy. Co. ....	Feb. 23, 1900	Dec. 13, 1900	Apr. 3, 1901	.....do.....	.....
Proctor & Gamble Company v. Cincinnati, Hamilton and Dayton Rwy. Co. et al.	Feb. 24, 1900	Oct. 24, 1901	Apr. 10, 1903	Order not complied with.	July, 1904
Consolidated Forwarding Co. v. Southern Pacific Co. et al.	Mar. 3, 1900	Nov. 20, 1900	Apr. 19, 1902	.....do.....	Aug., 1902
Southern California Fruit Exchange v. Southern California Rwy. Co. et al.	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
Mayor and City Council of Tifton v. Louisville and Nashville R. R. Co. et al.	May 17, 1900	Mar. 6, 1901	Mar. 27, 1902	.....do.....	.....do.....
Red Cloud Mining Co. v. Southern Pacific Co. ....	Nov. 27, 1900	June 10, 1901	Apr. 30, 1902	Complaint dismissed.	.....
National Wholesale Lumber Dealers' Association v. Norfolk and Western Rwy. Co. et al.	Jan. 15, 1901	May 22, 1901	Dec. 11, 1901	Order complied with.	.....
Pioneer Hat Works v. Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co. et al.	Feb. 18, 1901	July 5, 1901	Nov. 27, 1901	.....do.....	.....
S. J. Hawkins v. Lake Shore and Michigan Southern Rwy. Co.	Mar. 6, 1901	Dec. 6, 1901	Apr. 23, 1902	.....do.....	.....
S. J. Hawkins v. Wheeling and Lake Erie R. R. Co.	.....do.....	Jan. 30, 1902	.....do.....	.....do.....	.....

Includes the application of 181 roads.



Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
National Hay Association <i>v.</i> Lake Shore and Michigan Southern Rwy. Co. et al.	Aug. 6, 1901	Feb. 17, 1902	Oct. 16, 1902	Order not complied with.	Mar., 1903	
Charles M. Cist <i>v.</i> Michigan Central R. R. Co. ....	Oct. 28, 1901	June 15, 1903	Apr. 1, 1904	Complaint dismissed.	.....	.....
G. C. Pratt Lumber Co. <i>v.</i> Chicago, Indianapolis and Louisville Rwy. Co.	Dec. 11, 1901	Mar. 7, 1903	Jan. 27, 1904	.....do.....	.....	.....
Ulrick & Williams <i>v.</i> Lake Shore and Michigan Southern Rwy. Co. et al.	Jan. 9, 1902	Jan. 8, 1903	May 14, 1903	.....do.....	.....	.....
Chamber of Commerce of Chattanooga <i>v.</i> Southern Rwy. Co. et al.	Feb. 14, 1902	Nov. 12, 1902	Mar. 12, 1904	.....do.....	.....	.....
Railroad Commission of Kentucky <i>v.</i> Louisville and Nashville R. R. Co.	Feb. 26, 1902	May 6, 1902	Mar. 17, 1904	.....do.....	.....	.....
Diamond Mills <i>v.</i> Boston and Maine R. R. ....	Mar. 13, 1902	July 10, 1902	Nov. 17, 1902	Order complied with.	.....	.....
S. Marten <i>v.</i> Louisville and Nashville R. R. Co. ....	Mar. 17, 1902	Oct. 23, 1902	Nov. 21, 1903	.....do.....	.....	.....
Chicago Live Stock Exchange <i>v.</i> Atchison, Topeka and Santa Fe Rwy. Co. et al.	Apr. 5, 1902	Dec. 21, 1903	Jan. 7, 1905	Order not complied with.	Apr., 1905.	.....
F. C. Sayles <i>v.</i> New York, New Haven and Hartford R. R. Co. et al.	Apr. 14, 1902	Feb. 24, 1903	Apr. 20, 1903	Complaint dismissed.	.....	.....
Aberdeen Group Commercial Association <i>v.</i> Mobile and Ohio R. R. Co.	Apr. 17, 1902	Jan. 16, 1903	June 24, 1904	Order not complied with.	July, 1905	.....
In re Rates and Practices by the Mobile and Ohio R. R. Co. in the Transportation to Vicksburg, Miss., of Grain Shipped from or through St. Louis.	Apr. 18, 1902	May 17, 1902	Jan. 31, 1903	No order issued.	.....	.....
In re Transportation of Immigrants from New York and other Atlantic Ports to Western Destinations.	Apr. 21, 1902	May 10, 1902	Jan. 27, 1904	.....do.....	.....	.....
Mayor and City Council of Wichita, Kans., <i>v.</i> Atchison, Topeka and Santa Fe Rwy. Co. et al.	May 1, 1902	May 21, 1903	Oct. 24, 1903	Order complied with.	.....	.....
Cincinnati Chamber of Commerce and Merchants Exchange <i>v.</i> Baltimore and Ohio Southwestern R. R. Co. et al.	.....do.....	Nov. 30, 1903	Oct. 4, 1904	Complaint dismissed.	.....	.....
Mayor and City Council of Wichita, Kans., <i>v.</i> Atchison, Topeka and Santa Fe Rwy. Co. et al.	May 20, 1902	May 21, 1903	Oct. 24, 1903	No order issued.	.....	.....
Do.....do.....	.....do.....	.....do.....	June 18, 1903	.....do.....	.....	.....

Mayor and City Council of Wichita, Kans., v. Chicago, Rock Island and Pacific Rwy. Co. et al.	June 12, 1902	.....do.....	Oct. 24, 1903	Order complied with.	.....
John W. Blackman, Jr., v. Southern Rwy. Co. et al.	June 23, 1902	June 29, 1904	June 29, 1904	Complaint dismissed.	.....
Mayor and City Council of Wichita, Kans., v. Missouri Pacific Rwy. Co. et al.	June 23, 1902	May 21, 1903	Jan. 27, 1904	No order issued.	.....
Charlotte Shippers' Association v. Southern Rwy. Co. et al.	July 24, 1902	Mar. 23, 1903	June 22, 1905	Complaint dismissed.	.....
Charlotte Shippers' Association v. Seaboard Air Line Rwy. et al.	.....do.....	.....do.....	June 23, 1905	.....do.....	.....
John W. Blackman, Jr., v. Columbia, Newberry and Laurens R. R. Co.	Aug. 4, 1902	June 29, 1904	June 29, 1904	Order complied with.	.....
W. H. H. Maclean v. Boston and Maine R. R. Co. et al.	Oct. 1, 1902	Nov. 6, 1902	Dec. 2, 1903	Complaint dismissed.	.....
Derr Manufacturing Co. v. Pennsylvania R. R. Co. et al.	Oct. 7, 1902	June 8, 1903	Dec. 18, 1903	.....do.....	.....
In re Proposed Advance in Freight Rates. et al.	Dec. 1, 1902	Mar. 20, 1903	Apr. 1, 1903	No order issued.	.....
Samuel K. Behrend v. Washington Southern Rwy. Co. et al.	Jan. 30, 1903	Apr. 21, 1903	Dec. 2, 1903	Complaint dismissed.	.....
S. S. Daish & Sons v. Cleveland, Akron and Columbus Rwy. Co. et al.	.....do.....	June 4, 1903	June 18, 1903	.....do.....	.....
Duluth Shingle Co. v. Duluth, South Shore and Atlantic Rwy. Co.	Feb. 5, 1903	June 22, 1903	Feb. 2, 1905	Order complied with.	.....
Charles A. Thompson v. Pennsylvania R. R. Co.	Feb. 25, 1903	Feb. 14, 1905	Mar. 10, 1905	Complaint dismissed.	.....
Buckeye Buggy Co. v. Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co. et al.	Feb. 27, 1903	Nov. 7, 1903	Dec. 2, 1903	Order complied with.	.....
Paxton Tie Co. v. Detroit Southern R. R. Co. et al.	.....do.....	Oct. 9, 1903	Jan. 7, 1905	Order not complied with.	.....
C. S. Bell Co. v. Baltimore and Ohio Southwestern R. R. Co. et al.	Mar. 9, 1903	Oct. 22, 1903	Dec. 2, 1903	Order complied with.	.....
John H. Parks v. Cincinnati and Muskingum Valley R. R. Co.	.....do.....	Nov. 27, 1903	Jan. 30, 1904	Complaint dismissed.	.....
In re Transportation of Salt from Points in Michigan to Missouri River Points and Intermediate Localities.	Mar. 10, 1903	Aug. 25, 1903	Mar. 12, 1904	.....do.....	.....

Commission awarded reparation, which can only be forced in the proceeding instituted by complainants.

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
Glade Coal Co. v. Baltimore and Ohio R. R. Co. ....	Mar. 26, 1903	Dec. 18, 1903	Apr. 23, 1904	Order not complied with.	.....	Commission awarded reparation, which can only be enforced in the proceeding instituted by complainants.
Central Yellow Pine Association v. Vicksburg, Shreveport and Pacific R. R. Co.	Apr. 14, 1903	Feb. 17, 1904	Mar. 19, 1904	Complaint dismissed.	.....	
William Wrigley, Jr., & Co. v. Cleveland, Cincinnati, Chicago and St. Louis Rwy. Co. et al.	Apr. 22, 1903	June 27, 1904	Jan. 5, 1905	.....do.....	.....	
In re Allowances to Elevators by the Union Pacific R. R. Co.	May 7, 1903	Dec. 21, 1903	June 25, 1904	.....do.....	.....	
Georgia Peach Growers' Association v. Atlantic Coast Line R. R. Co. et al.	June 6, 1903	Mar. , 1904	June 4, 1904	Order partially complied with.	.....	
Gardner & Clark v. Southern Rwy. Co. ....	June 17, 1903	June 24, 1904	June 25, 1904	Order complied with.	.....	
H. H. Tift et al. v. Southern Rwy. Co. et al. ....	June 23, 1903	Mar. 26, 1904	Feb. 7, 1905	Order not complied with.	.....	Circuit court referred case to Commission for findings on June 28, 1905. Court granted injunction and upheld Commission's findings.
Edward G. Davies v. Pere Marquette R. R. Co. ....	June 25, 1903	May 10, 1904	Jan. 5, 1905	Complaint dismissed.	.....	
Cannon Falls Farmers' Elevator Co. v. Chicago Great Western Rwy. Co. et al.	June 30, 1903	Jan. 6, 1905	Mar. 25, 1905	No order issued.	.....	
Central Yellow Pine Association v. Illinois Central R. R. Co. et al.	July 24, 1903	Apr. 8, 1904	Feb. 7, 1905	Order not complied with.	June, 1905	

E. D. Hewins <i>v.</i> New York, New Haven and Hartford R. R. Co.	Aug. 4, 1903	Oct. 17, 1903	Apr. 11, 1904	Complaint dismissed.	.....
Denison Light and Power Co. <i>v.</i> Missouri, Kansas and Texas Rwy. Co.	Aug. 10, 1903	Apr. 21, 1904	June 25, 1904	Order partially complied with.	.....
W. J. Koch & Co. <i>v.</i> Pittsburg, Cincinnati, Chicago and St. Louis Rwy. Co. et al.	Oct. 3, 1903	Feb. 21, 1905	Apr. 11, 1905	No order issued	.....
In re Transportation of Salt from Hutchinson, Kans.	Nov. 21, 1903	Jan. 11, 1904	Jan. 19, 1904	.....do	.....
C. M. Barrow <i>v.</i> Yazoo and Mississippi Valley R. R. Co. et al.	Nov. 28, 1903	May 14, 1904	June 25, 1904	.....do	.....
A. G. Swaffield <i>v.</i> Atlantic Coast Line R. R. Co. et al.	Dec. 4, 1903	June 1, 1904	June 24, 1904	Order complied with.	.....
New Orleans Live Stock Exchange <i>v.</i> Texas and Pacific Rwy. Co.	.....do	May 28, 1904	June 25, 1904	.....do	.....
In re Publication and Filing of Tariffs on Export and Import traffic.	Dec. 1, 1903	Jan. 7, 1904	Feb. 5, 1904	No order issued	.....
Charles Roth <i>v.</i> Texas and Pacific Rwy. Co. ....	June 29, 1903	.....	Nov. 21, 1903	.....do	.....
In re Division of Joint Rates and Other Allowances to Terminal Railroads.	Mar. 3, 1904	June 16, 1904	Nov. 3, 1904	.....do	.....
Capital City Gas Co. <i>v.</i> Central Vermont Rwy. Co. et al.	Mar. 17, 1904	Nov. 15, 1904	Mar. 10, 1905	.....	.....
Mershon, Schuette, Parker and Company <i>v.</i> Central R. R. Co. of New Jersey et al.	Mar. 22, 1904	Dec. 8, 1904	Jan. 13, 1905	.....	.....
H. B. Pitts and Son <i>v.</i> Atchison, Topeka and Santa Fe Rwy. Co. et al.	Mar. 26, 1904	Feb. 22, 1905	Apr. 24, 1905	order not complied with.	.....
In re Differential Freight Rates to and from North Atlantic Ports.	Apr. 11, 1904	Apr. 6, 1905	Apr. 27, 1905	No order issued	.....
Gallogly & Firestone <i>v.</i> Cincinnati, Hamilton and Dayton Rwy. Co.	Apr. 18, 1904	Dec. 1, 1904	Apr. 24, 1905	.....do	.....
In re charges for the Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads.	Apr. 26, 1904	July 19, 1905	June 22, 1905	.....do	.....
St. Louis Hay and Grain Co. <i>v.</i> Mobile and Ohio R. R. Co.	June 8, 1904	May 13, 1905	May 15, 1905	.....	.....

Commission awarded reparation, which can only be enforced in the proceeding instituted by complainants.

Title of case.	Date filed.	Date submitted.	Date decided.	Compliance or non-compliance.	Date suit instituted in circuit court.	Remarks.
St. Louis Hay and Grain Co. v. Chicago, Burlington and Quincy R. R. Co. et al. H. B. Pitts & Son v. St. Louis and San Francisco R. R. Co.	Oct. 19, 1904	May 13, 1905	May 15, 1905	Complaint dismissed.	.....	Commission awarded reparation, which can only be enforced in the proceeding instituted by complainants.
	Oct. 28, 1904	Feb. 22, 1905	Apr. 24, 1905	Order not complied with.	.....	
In re Alleged Unlawful Rates and Practices in the Transportation of Coal and Mine Supplies by the Atchison, Topeka and Santa Fe Rwy. Co. Lehman-Higginson Grocer Co. et al. v. Atchison, Topeka and Santa Fe Rwy. Co. et al. William W. Wylie v. Northern Pacific Rwy. Co. et al.	Nov. 29, 1904	Dec. 29, 1904	Feb. 1, 1905	No order is used.	.....	
	Dec. 22, 1904	Jan. 12, 1905	Jan. 17, 1905	Order complied with.	.....	
	Mar. 9, 1905	May 16, 1905	June 23, 1905	Order not complied with.	.....	



Mr. FORAKER. This appendix shows, and I want the attention of Senators to this, that since the Interstate Commerce Commission was organized, in the eighteen years of its existence, counting from the beginning down to November, 1905, it disposed of 386 cases that were brought before it. Only 183 of these cases were disposed of in less than one year from the time when the complaints were respectively filed. The remaining 203 required the following time for their disposition. Now, I want to call attention to this, for I know it is something Senators are not aware of, and the explanation for it is as plain and simple as anything can be. Of the 203 cases they have disposed of last referred to, one of them required over nine years from the filing of the complaint; one of them more than seven years, two of them more than five years, six from four to five years, thirty-three from three to four years, sixty-one more than two years but less than three years, ninety-nine of them more than one year. Most of them almost two years.

Mr. President, the trouble has been the trouble that will attend the doing of this kind of work by any board or any commission. Five men sitting in judgment in these complicated and difficult cases, hearing witnesses, hearing arguments, traveling over the country, going here and there to get evidence, will necessarily take much more time than is ordinarily taken in a court of record. I think the members of the Interstate Commerce Commission have been splendid men as a rule. I think they have been able men. I think they have been faithful men. I think they have striven to do their duty, and that they have done their duty as efficiently as any such board could. But it is a weakness attending any such board that it requires time for it to hear litigated propositions, to weigh evidence, to reach conclusions, and to announce opinions, and it is no wonder to me that they have taken on an average years to dispose of business that has been brought before them, in ninety-nine cases more than a year, in no case less than a year where there has been controversy, and extending all the way in longer and longer periods from two years up to nine years to dispose of these cases.

Now, if you increase the number to nine commissioners, you will increase that very difficulty. I think a board of five commissioners would be more efficient than a board of nine commissioners. I do not know what you would do with nine commissioners. They would be in each other's way. You will increase the difficulty, in my judgment, without any compensating benefit. It is no more to me than it is to anybody else whether we have five commissioners or seven commissioners or nine commissioners. Five commissioners is a very proper number. I think it would be more efficient if there were only three. But we have had five. We are accustomed to that number. If you make it seven you will intensify this difficulty. If you make it nine you will accentuate it still more.

Now, Mr. President, another word about it. We are to have, according to the amendment that has been offered by the Senator from Massachusetts, not more than five of the nine from the same political party. If there is anything in connection with this whole legislation that I have less patience with than another it is this proposition that you are to take into consideration political affiliations in securing a body of nine men to ad-

minister the great and responsible business interests which we are about to intrust to their care.

What have five Democrats or five Republicans, as such, to do with the business of this country? I do not think we should trammel the President in that way in making these appointments. I think we should leave it to his own good judgment. Then we are to have not only not more than five men from the same party, but we are to have not more than three lawyers on this board. If there is a class in this country who have less capacity to make railroad rates and establish railroad regulations, they are the lawyers of the country. We want business experience, not legal ability.

Mr. LODGE. It says "at least three lawyers."

Mr. FORAKER. At least three of said commissioners shall be lawyers. That is worse than I thought it was. I thought the requirement was that not more than three of them should be lawyers. I do not think any of them should necessarily be lawyers. I think that matter should be left to the President to determine. I think it is of a great deal more importance to the business interests of this country that the President should find somebody who knows something about the railroad business to go on this Commission than somebody who knows only about the litigation of the railroads and the lawsuits of the business interests of the country.

Mr. HALE. Mr. President, the Senator is a very great lawyer—

Mr. FORAKER. I hope the Senator will not take my time with compliments. If he has a question to ask let him ask it. I have only ten minutes more.

Mr. HALE. Does not the Senator think that in that great bureau there ought to be at least three lawyers?

Mr. FORAKER. Probably there should be two or three lawyers on it, but I would leave it to the President to say how many lawyers he would put on it. I would let the President take the whole United States of America into consideration—lawyers, merchants, carriers, traffic men, and everybody else—and select the number to constitute the Commission as we say it shall be composed, whether the number be five or seven or nine.

I have another proposition. If we are going to indulge in the "square deal," let us look at the map for a minute. I do not know who prepared it, but if these Commissioners are to be distributed according to judicial circuits—

Mr. DILLINGHAM. Will the Senator allow me to interrupt him for just a moment? I brought that map into the Senate. It was furnished me by the secretary of the Interstate Commerce Commission at my request.

Mr. FORAKER. I did not know where it came from, but it presents just what I wanted to call attention to.

Mr. DILLINGHAM. Here is a statement of mileage in each of the circuits and the population.

Mr. FORAKER. If the Senator will allow me, I will beg the Senator to present it.

Mr. DILLINGHAM. I hand it to the Senator to use.

Mr. FORAKER. I thank the Senator, though I did not want to take anybody else's ammunition. I would be glad if he would use it.

Mr. President, I want Senators to look at these judicial circuits. One, two, three, and four are practically in New England.

Several SENATORS. Oh, no.

Mr. FORAKER. Well, I may be stretching that a little. You see they are practically in New England. New England and New York constitute three, I think.

Mr. KEAN. With New Jersey and Pennsylvania.

Mr. FORAKER. Here are three. Then Ohio, Michigan, and Kentucky.

Mr. TILLMAN. Mr. President—

Mr. FORAKER. I will send this to the desk and have it read. The Senator will excuse me for just a minute. There are three in what is called "New England." I expanded a little in New England.

Mr. HALE. Why not say Massachusetts?

Mr. FORAKER. We will include Pennsylvania and New York in it, but there they are all in the Atlantic seaboard States, practically all.

Mr. HOPKINS. Will the Senator allow me?

Mr. FORAKER. In a moment. Then come the sixth and seventh circuits—seven, six, three, two. If one comes from each of those districts, they would have control of the Commission. The whole South would have only two. The central circuit, No. 8, the largest circuit, both in point of area and in railroad mileage, covering the whole central part of the country, and the circuit having the greatest possibility of future development in both wealth and population for the future, would have only one.

Mr. TILLMAN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from South Carolina?

Mr. FORAKER. I yielded to the Senator from Illinois; but I will yield to the Senator from South Carolina.

Mr. TILLMAN. I wanted to suggest to the Senator from Ohio that he and I have had some little debate on this subject once before in the Senate, and realizing that this is a very important matter, and would necessarily be a prolific source of debate, I asked the Secretary of the Interstate Commerce Commission to prepare a similar map with the one I see the Senator has, and in order that Senators may have these maps as well as the figures accompanying them, giving the judicial circuits, the railway mileage in each, the population in each, the area in each, the form of complaints in the past five years—

Mr. FORAKER. The minutes are getting away.

Mr. TILLMAN. I was going to ask the Senator to let us adjourn this issue over and have the information printed to-night, so that every Senator in the morning can have all this data, because the Senator from Ohio can not make his point about New England having so much of this good thing unless other Senators realize—

Mr. FORAKER. I will agree to that if it is understood that I can have my other ten minutes in the morning. [Laughter.]

Mr. HOPKINS. Now, Mr. President, before the Senator from Ohio takes his seat—

Mr. TILLMAN. I should like to make a motion to have this document and the accompanying map printed to-night.

Mr. FORAKER. I yield for that purpose.

Mr. TILLMAN. I will send it to the desk.

The VICE-PRESIDENT. Is there objection to the request made by the Senator from South Carolina? The Chair hears none, and it is so ordered.

Mr. HOPKINS. I desire to call the attention of the Senator from Ohio, before he takes his seat——

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Illinois?

Mr. FORAKER. Certainly.

Mr. HOPKINS. To the fact that the judicial circuit where the Senator from Maine contends they should have a single member, the first circuit, is composed of the States of Maine, New Hampshire, Massachusetts, and Rhode Island, and in that circuit they have but 5,629 miles of railroad, whereas in the eighth circuit they have 66,029 miles. So that Maine and Massachusetts and that New England circuit having 5,000 miles of railroad, would get one of these commissioners as against a district that has 66,000 miles of railroad in it.

Mr. HALE. We do not insist on that. We are ready to accept the suggestion of the Senator from Texas and have transportation districts within the Union divided equally.

Mr. CULLOM. Will the Senator from Ohio allow me?

Mr. FORAKER. If I have time enough left I will ask to have incorporated in the RECORD this analysis, which I was reading, made by Mr. Walker D. Hines, of Louisville.

The VICE-PRESIDENT. Without objection, it is so ordered. The matter referred to is as follows:

The Interstate Commerce Commission has furnished the Senate Committee on Interstate Commerce, under date of November 21, 1905, a statement showing the following facts relative to formal complaints before the Commission: (1) Title of case; (2) date filed; (3) date submitted; (4) date decided; (5) compliance or noncompliance by carriers; (6) date suit, if any, was instituted in circuit court. This has been published as Appendix M of the committee's hearings on "regulation of railway rates."

This statement covers a period of eighteen years and seven months and shows that during that time the Commission decided 386 formal complaints, or, on an average, a little less than 21 complaints per year.

Although it might naturally be assumed that the Commission, having to decide only twenty-one cases per year, could decide all of them promptly, yet we find from this statement that promptness has been by no means the rule.

Of the 386 cases included in the statement, only 183 were disposed of in less than one year from the respective dates the complaints were filed. The remaining 203 required much more time for their disposition, as follows:

Required over 9 years from filing of complaint.....	1
Required over 7 years from filing of complaint.....	1
Required over 5 years each from filing of complaint.....	2
Required from 4 to 5 years each from filing of complaint.....	6
Required from 3 to 4 years each from filing of complaint.....	33
Required from 2 to 3 years each from filing of complaint.....	61
Required from 1 to 2 years each from filing of complaint.....	99
Total.....	203

Of the 386 cases decided by the Commission, 72 were filed during the calendar year 1887, and it is noteworthy that 63 of these were decided in less than one year from the date of filing. On the other hand, of the 314 cases filed after the year 1887 only 120 were decided in less than one year from the date of filing the complaint. In other words, at the outset and before the Commission became overwhelmed with business it decided over 87 per cent of its cases within less than twelve months, but during the period from the second year of the Commission's existence to the present time it has decided only 38 per cent of its cases within twelve months from the time of filing.



The statement gives information only as to cases decided up to November 21, 1905, and not as to cases pending and not decided on that date. The Commission's annual reports show the number of formal complaints filed each year, and the statement now furnished shows which of those complaints have been decided. The following comparison shows the proportion of the complaints filed during each of the past three years which had been decided by the Commission up to November 21, 1905:

Year ending December 1—	Formal complaints filed.	Number of such complaints decided up to Nov. 1, 1905.
1903 .....	81	28
1904 .....	62	12
1905 .....	65	2

Doubtless numerous formal complaints instituted in the years mentioned have been discontinued by the complainants, but the figures above given suggest that it is entirely probable that numerous cases one, two, or three years old, and perhaps older, are still before the Commission and undisposed of.

Therefore Appendix M does not give an entirely accurate idea as to delay on the part of the Commission in deciding cases under normal conditions, because it includes the large number of cases which were promptly decided at the outset before the Commission's office became congested with business and excludes such delayed cases as may have been pending before the Commission undecided on November 21, 1905. But, taking Appendix M as it stands, it is apparent that there have been serious delays on the part of the Commission.

Moreover, much of the delay in deciding these cases has occurred after all the evidence and arguments were in and the cases were submitted for decision. Appendix M discloses the following figures relative to the time required after submission for decision of the 203 cases which were not decided in less than a year after the filing of complaint:

Required over 4 years after submission.....	1
Required from 3 to 4 years each after submission.....	4
Required from 2 to 3 years each after submission.....	23
Required from 1 to 2 years each after submission.....	59
Required from 6 to 12 months each after submission.....	51
Were decided in less than 6 months.....	63
Cases date of submission not shown.....	2

Total ..... 203

It will of course be understood that all of the 386 formal complaints disposed of by the Commission since its organization do not relate to rates. The information in that statement which is of especial interest at this time is that showing the length of time required to dispose of cases relating to rates wherein the Commission actually found occasion to condemn the rates of carriers.

On pages 840 and 841 of Volume II of the Hearings on the Regulation of Railway Rates before the Senate Committee on Interstate Commerce is a table furnished by the Interstate Commerce Commission, showing cases in which the Commission found rates complained of to be unreasonable and ordered them to be discontinued. The last decision included in this table is one of July 27, 1904. The table contains sixty-three cases. Appendix M shows the time required for the decision of these cases to have been as follows:

Required over 4 years from filing of complaint.....	1
Required from 3 to 4 years each from filing of complaint.....	12
Required from 2 to 3 years each from filing of complaint.....	13
Required from 1 to 2 years each from filing of complaint.....	18
Required less than 1 year.....	19

Total ..... 53

Thus twenty-six cases, or more than 41 per cent of the cases in which the Commission found it necessary to condemn rates, required more than two years for a decision, and the average time required for each of these twenty-six cases was slightly over three years.



## II.

The delay disclosed by this analysis of Appendix M can be fully accounted for by a reference to the numerous grave and arduous duties imposed upon the Interstate Commerce Commission. If the Commission had had nothing to do, or but little to do, outside of the decision of formal controversies, it could have rendered its decision with far greater promptness.

The Commission is charged with the duty of receiving, filing, and supervising all the interstate tariffs of rates issued by railroads in this country; with the duty of receiving statistical reports from carriers subject to the interstate-commerce act, and of obtaining from them any further necessary statistical information, which must all be analyzed and formulated into general statistical reports under the Commission's direction; with the duty of receiving and compiling monthly reports from all interstate railroads relative to collisions, derailments, and accidents to passengers or employees. These functions are very important, and necessitate more or less personal supervision and direction by the members of the Commission.

The safety-appliance acts vest in the Commission certain important discretionary powers involving, for their proper exercise, much care and labor on the part of the members of the Commission. The safety-appliance acts also require the Commission to detect and prosecute all violations thereof, and for that purpose the Commission maintains a force of special agents or detectives, whom it must direct and supervise.

One of the most important and successful functions of the Commission has been that of acting as an intermediary between shippers and carriers, and in that capacity adjusting complaints and removing abuses—or, in other words, avoiding controversies and litigation. The proper discharge of this function demands a very large part of the attention of all the members of the Commission; it entails upon them a very heavy correspondence with shippers and carriers, and compels them to put their time largely at the disposal of shippers and officers of carriers seeking interviews. Considering the extent of this country, its enormous railroad mileage, and the thousands of controversies which may arise between shippers and carriers in which the mediation of the Commission would be valuable, these functions of themselves might well be calculated to take up practically the entire time of any single tribunal.

One of the most important functions of the Commission is to maintain a vigilant supervision of the carriers throughout the country for the purpose of detecting, prosecuting, and preventing the giving of secret rebates. The work necessary in the discharge of these functions has taken much of the Commission's time, and still it is generally accepted as true that the Commission has not devoted anything like enough time to this important subject.

In some of the larger States the State commissions seem to be kept busy looking after corresponding matters within their respective jurisdictions; yet the Interstate Commerce Commission, with a jurisdiction a hundredfold more extensive and dealing with a bewildering variety and complexity of local conditions, has been expected in the past to perform similar work throughout the United States and to find time for the prompt performance of all of it. The expectation has been unreasonable, and, naturally, it has not been realized in practice. The Commission has not had the time to attend to all of its duties, has been compelled to neglect very largely one of its most important and difficult duties, to wit, the detection and prevention of secret rebates, and the above analysis of Appendix M shows how much it has been delayed in discharging the important function of passing upon formal controversies between shippers and carriers.

As far back as 1890 the Commission took occasion to say, in its fourth annual report:

"When the question arises, as it often must, why obedience to the law is not more completely secured, it is in part answered by the very magnitude of the country and of its enormous railway mileage, equal to many times that of any other country and considerably exceeding that of all Europe combined.

"The railway mileage of this country, in round numbers, is about 160,000 miles. The number of railway employees exceeds 700,000, and adding to these the number connected with railroad transportation in various capacities, such as officials of roads, officers and employees of associations, traffic solicitors, legal advisers, and others, the aggregate is not far from a million, or nearly one-twelfth of the adult male population of the country. The business done includes the carriage of 540,000,000 tons of freight and 472,000,000 passengers. The enormous extent of the subject matters of regulation is shown by these statements. Any criticism of the efficiency of regulation would obvi-

ously be defective if it failed to take note of the vast number of persons and the extent of the business to be regulated."

The statements thus made by the Commission were based upon the statistics for the year ending June 30, 1889. Comparing these figures with the statistics for the year ending June 30, 1904, which are the latest available, we find that the railway mileage has increased to over 214,000 miles, the number of railway employees to 1,296,000, the number of passengers carried to 715,000,000, and the number of tons of freight carried to 1,300,000,000.

Doubtless most of the dissatisfaction with the present interstate commerce act which has been engendered in various quarters has been based upon an apparent inefficiency of the law which would have disappeared entirely if the Commission had had the time to perform the duties imposed upon it. These considerations suggest the query whether a division rather than a multiplication of the Commission's present duties is not the thing needed for satisfactory enforcement of the law.

### III.

The President in his last annual message to Congress laid emphasis upon "*the need of providing for expeditious action by the Interstate Commerce Commission.*" Many of the pending bills seem to proceed upon the theory that the only thing needed in order to insure expeditious action by the Commission is to add to the Commission's duties and responsibilities.

For illustration, the Hepburn bill, without removing a single duty or function of the Commission, imposes upon it many other duties and functions. It provides that no advances or reductions shall be made in rates except after thirty days' public notice, unless the Commission, in its discretion and for good cause shown, allow changes upon less notice, either in particular instances or by general orders. It is well known that the legitimate necessities of commerce absolutely require many rates to be changed upon less than thirty days' notice, and that emergencies constantly arise which make it highly important that changes, and especially reductions, should be made on very short notice. The total number of imperative demands of this kind which will arise per month or per week will undoubtedly be very large where such an enormous and varied commerce and such a vast railroad mileage are involved. Whenever such a demand is presented to the Commission it will, under the Hepburn bill, become the duty of the Commission to take the necessary time to consider and act upon that demand; and every such demand will have to be given preference over all other matters, for a few days' delay will be equivalent to a denial. It is probable that this single provision will in itself be an immense embarrassment to the Commission in the discharge of its other functions.

The Hepburn bill also empowers and requires the Commission to establish through routes and joint rates, and where the carriers, parties thereto, can not agree, to prescribe the division of such rates and the terms and conditions under which such through routes shall be operated. This is an entirely new jurisdiction and transfers to the Commission the duty of making business arrangements among railroad companies where they can not agree among themselves. Whatever may be said of this plan on other accounts, it can not be denied that it will probably demand an important part of the Commission's time. The same observations apply with respect to the provision of the Hepburn bill authorizing the Commission to fix the reasonable compensation to be paid by a carrier to the owner of property for any service rendered or instrumentality furnished by such owner in connection with the transportation of his property.

Another important feature of the Hepburn bill is the authority given to the Commission to employ examiners for the purpose of inspecting all the accounts, records, and memoranda of carriers and to prescribe the form of all accounts, records, and memoranda which the carriers may keep. Such provision, duly safeguarded, is doubtless eminently proper for facilitating the discovery, punishment, and prevention of secret discriminations of every character; but it is obvious that the efficient performance of this function throughout the United States will require an immense amount of time and labor, not merely on the part of the examiners of the Commission, but on the part of the Commission itself. Such a grave and delicate duty can not properly be left to a lot of subordinates without constant supervision.

The Hepburn bill further imposes upon the Commission the paramount duty and responsibility of prescribing maximum rates for carriers throughout the United States whenever existing rates are complained of as unlawful. On every hand this is conceded to be a power of supreme delicacy and importance, requiring, for its discharge, undivided attention and ample time for complete investigation and deliberation.

Thus, in many directions, the Hepburn bill increases the duties, difficulties, and responsibilities of the Commission, and does not remove any obstacles which now stand in the way of the Commission's complete and prompt discharge of its duties. The plan to increase the membership of the Commission from five to seven will not afford relief. Primarily it simply means that a majority out of seven, instead of a majority out of five, must agree upon matters demanding action or decision upon the part of the Commission. Such increase in the membership of the Commission wholly fails to reach the inherent defect in the present system, which intrusts to a single tribunal so many different and difficult duties that it is utterly impossible to secure their prompt and adequate performance.

In these respects the Hepburn bill is typical of all the measures proposing to give the Commission the power to make or revise rates. All of them seem to lose sight of one of the principal objects of additional legislation, to wit, "the need of providing for expeditious action by the Interstate Commerce Commission." Appendix M shows how little expedition there has been on the part of the Commission in reaching a conclusion upon rate controversies before it. The present law, with its multifarious duties, explains why the results have not been expeditious. The Hepburn bill and similar measures propose to create more duties and difficulties, with the inevitable result that there would be even less expedition than has been realized under the present law. There would probably have to be even more neglect than in the past of the important function of stamping out rebates, and at the same time more delay in reaching conclusions upon rate controversies than Appendix M shows to have been habitual under the present law.

WALKER D. HINES.

LOUISVILLE, KY., *February 8, 1906.*

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*May 17 1906.*

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Indiana to the amendment made as in Committee of the Whole.

Mr. FORAKER. Mr. President, I want to address the Senate upon this amendment, and we will not be in a hurry about voting on it. I imagine, if it is to be insisted upon in this form. I have already addressed the Senate two or three times in regard to this matter. I think it is one of the most important matters connected with this legislation.

I wish to call the attention of Senators to what we have done and what we are now invited to do with respect to this kind of property interest. I have illustrated by telling of our situation at the city of Cincinnati. The interest I have in this amendment is one that belongs and pertains to that locality. I have already explained that we are just now taking steps to make a large investment of money. Five million dollars it is estimated will be required. The money is now being raised for the purpose of constructing and putting into operation a pipe line from the city of Cincinnati to the natural-gas fields of West Virginia, a distance of 274 miles, where the parties interested have acquired large fields from which they expect to draw natural gas.

That is a purely individual enterprise. It requires the amount I have indicated, because, according to the estimates of the engineers, it is found that that is the amount which will be required to put in the kind of a pipe which is necessary, a 16-inch pipe, as I am informed. The object is to expend that amount of money in order to take natural gas to the city of Cincinnati, not alone for municipal purposes, but also for manufacturing purposes, because the people engaged in manufacturing there, the people who have factories, mills, foundries, and

machine shops want cheap fuel for those purposes. If when they have done that they are to be required to open the pipe line to everybody who may have natural gas to send to market, taking it to the other towns that may be along the line through which the pipe will pass; if that should be required, in addition to what they want to do for the city of Cincinnati, it will require still another pipe line, I suppose, and another expenditure of \$5,000,000, so that the people who have no thought of becoming common carriers, who are simply trying to take care of their own local business, will be put into the business of common carriers against their will and be required to spend not only the \$5,000,000 which their necessities require, but \$5,000,000 more for a doubtful enterprise, in order that they may meet the requirements of the whim of somebody.

Mr. BEVERIDGE. Will the Senator permit me?

Mr. FORAKER. Yes; if the Senator does not take too much time.

Mr. BEVERIDGE. I will take no time except to address to the Senator the same question I addressed to him yesterday, when he was making the same speech he is making now. Might not the same situation the Senator describes be also true of oil transported in pipe lines?

Mr. FORAKER. Yes; I imagine it would be true of oil, and I do not think you have any more right to do it in the one case than you have in the other.

Mr. BEVERIDGE. That is the whole thing.

Mr. FORAKER. In other words, I think the individual or the corporation, because you may speak of it in either way, for the terms of this amendment are "any corporation or any person or persons"—any individual, therefore, has a right, in carrying on his business in connection with it, to make use of oil, to make use of natural gas, or to make use of water, and may at his own expense put down pipes to meet the necessities of that business. I do not think the Congress of the United States has any right to make of that man a common carrier because his pipe line happens to cross a State line.

Mr. BEVERIDGE. Then the Senator is not in favor of this provision with reference to oil any more than with reference to natural gas.

Mr. FORAKER. I am not speaking about oil, but about natural gas.

Mr. BEVERIDGE. The only point is that you must treat both alike.

Mr. FORAKER. To treat both alike is what I am trying to do; and I say you have no right to make a common carrier out of a private individual who is transporting for his own particular business and has no thought or purpose of accommodating the public.

Now, Mr. President, we adopted this amendment (and to this I call the attention of Senators) before we had adopted the amendment offered by the Senator from West Virginia [Mr. ELKINS], which prohibits any common carrier from carrying any product or commodity in which it has any interest, direct or indirect, as an owner of any kind.

Now, what will be the consequence? We spend \$5,000,000 to carry our own natural gas from West Virginia to the city of Cincinnati. When we spend that money and are in a situation



to serve our purposes, we are told by the Congress of the United States, "You are a common carrier and must carry for everybody except only for yourself. You can not carry anything that belongs to you." What is that except confiscation of property?

It may be that it is confiscation of oil. I leave that for the Senator to comment upon; but it is confiscation of any kind of property to do the same thing; and I want to say that it is not creditable to the Senate of the United States so to legislate. On the contrary, it seems to me it is entirely discreditable.

Now, Mr. President, just one word. It seems to me the difficulty about this is not met by the addition of the words "for municipal purposes," for that is but a very limited and restricted use. It is a municipal purpose to light the streets of a municipality, but it is not a municipal purpose to supply natural gas to citizens under private contract, to supply it to factories, foundries, and machine shops. That is not a municipal purpose. The way to remedy this is not, therefore, by adding words of that kind, for they do not help, but by adding after the word "transportation," as I suggested to the Senator from Massachusetts when he offered it, the words "for the public." The only person who is a common carrier is one who transports for the public.

It has been said that these pipe lines are organized under statutes that call them common carriers. That is true to a certain extent, but it does not necessarily make them common carriers in the sense that they have the right to exercise the power of eminent domain—certainly not outside the State of their creation, where this corporation has gone with its pipe line. To give the power of eminent domain must be a case where private property is being taken for a public use, for the use of the public generally, not for the interest of some individual or some particular locality, such as may be indicated in these instances.

Now, what is the objection to putting in the words "transporting for the public?"

Mr. BACON. Mr. President, I should like very much to hear the Senator, but when he turns his face in the other direction it is impossible to do so.

Mr. FORAKER. I thank the Senator for calling my attention to the fact that I was not speaking loud enough for him to hear, for I want everybody to hear, for if there is anything about this bill I am in earnest about it is this.

It seems to me, when we adopted this amendment, we acted unwisely, if I may say that without appearing to criticise the Senate, and surely it was unwise when later on we voted that we would not only make a private pipe line a common carrier, but that we would deny to it the right to carry the very product that it was organized and constructed to carry.

The result would be as I have said, and that is all I can say, and it seems to me that is enough. If our people build this pipe line, it is for our use and for our benefit, not for the public. We do not want to go into competition with anybody else. If anybody else is to pipe gas out of that same territory, let him put in a pipe line, as we are doing.

Mr. BACON. Will the Senator permit me to ask him whether or not he has suggested any phraseology which will meet such a case as that which he now has in view?

Mr. FORAKER. Yes.



Mr. BACON. And at the same time not destroy the general purpose of the provision?

Mr. FORAKER. I think I have. I would be glad if the Senator from Georgia, who has the bill on the desk before him, will look at line 8, page 1, and see what I have suggested, namely, that after the word "transportation," the first word in the line, we insert "for the public," for I understand that any pipe line transporting for the public we would have the right to treat as a common carrier. But surely we have not reached the point where an individual can not have a pipe line of his own for water or for gas or for oil, or for anything else he may want it for. I called attention to the fact that this applies to persons as well as to corporations.

Mr. CULBERSON. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. CULBERSON. I ask the Senator if his purpose is not carried out in the phrase beginning at line 3, page 2, "who shall be considered and held to be common carriers within the meaning and purpose of this act," because in the case he mentions the company will not be a common carrier when only carrying gas for itself, and it will not be brought within the meaning of this act according to its own provision?

Mr. FORAKER. I have not heard of anybody putting that interpretation on that language. I called attention to it when the matter was under consideration a few days ago, and a different view was taken of it. It does not make it very clear, but if you were to put in the words "for the public," after "transportation," then there could not be any question about it, and I can not understand why that should be objected to. If there is anybody transporting in a pipe line of any commodity, no matter what it may be, for the public—

Mr. STONE. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Missouri?

Mr. FORAKER. Certainly.

Mr. STONE. I desire to ask the Senator from Ohio a question. He speaks of the situation at the city of Cincinnati and the purpose to connect the city with gas fields in West Virginia. Suppose his amendment should be agreed to, inserting the words "for the public," if gas should be transmitted to a reservoir, as I suppose it would have to be, and stored in that way in the city of Cincinnati and from thence transported to foundries and individual homes, would not that be a transmission for the public as much as if you transmit oil through pipes to reservoirs for sale? So how would that amendment help the Senator's case?

Mr. FORAKER. That shows the wisdom of having two or three minds directed to the same point. The Senator misapprehends what was in my mind, and what the Senator has just now expressed did not occur to me, the force of which I recognize. What I had in mind was any pipe line that is transporting for the public in the sense that it is transporting for all who bring to it the commodity which they want transported. I think that would be a common carrier under the law, and there is no objection to regulating it.

Mr. TELLER. I suggest to the Senator that perhaps he could use the term "transportation for hire" or "for compensation." I think that is better than the term he suggests.

Mr. FORAKER. Anything at all which indicates that when we get our property into operation it is not to be confiscated by act of Congress will satisfy me. I am not stickling for words, but I am for the substance.

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The PRESIDENT pro tempore. The Senator from Massachusetts offers an amendment, which will be stated.

The SECRETARY. On page 15, line 11, after the word "shall," insert "knowingly and willfully;" so that if amended it will read:

Every person or corporation who shall knowingly and willfully offer, grant, or give or solicit, accept or receive.

Mr. FORAKER. Mr. President, I favor the adoption of the amendment that the Senator from Massachusetts [Mr. LODGE] has offered. I do not rise, however, to speak to that, but only to put in the RECORD something I did not have at my command when I was speaking upon this amendment a few days ago. There was a good deal of discussion as to how it came about that in the enactment of the Elkins law the provision of imprisonment for violations of the interstate-commerce act was eliminated from the statute. I said in that connection that I understood that the Interstate Commerce Commissioners had recommended in their official reports that we abolish the provision for imprisonment, and I said, in addition to that, that at the time of the hearing before the Interstate Commerce Committee members of the Interstate Commerce Commission who appeared before the committee recommended that imprisonment be abolished.

There having been some dispute of that proposition, I have taken the trouble to look it up, and I now have here, which I send to the desk, the report of the Committee on Interstate and Foreign Commerce, of the House of Representatives, made on the Elkins bill—Senate bill 7053—a report made February 12, 1903. It is a report which embodies in part the testimony of both Mr. Knapp, Chairman of the Interstate Commerce Commission, and Mr. Fifer, who was at that time a member of the Interstate Commerce Commission, and who appeared in that capacity. I ask the Secretary to read first what is marked on page 3, an extract from the testimony of Mr. Knapp, and then to read from the following page the extract that is marked from the testimony of Mr. Fifer.

The PRESIDENT pro tempore. The Secretary will read as requested, if there is no objection.

The Secretary read as follows:

Hon. Martin A. Knapp, Chairman of the Interstate Commerce Commission, said:

\* \* \* \* \*

"It is idle to suppose that you can apply criminal remedies in the state of the criminal law for the correction of such abuses. It does not happen; it will not happen. But I believe that if the corporation could be indicted, if the officials, the subordinate officials, the competitors, or their representatives, or anybody having knowledge of the transaction could be examined before the Commission and compelled to disclose the facts on which the corporation was liable, then the corporation could be indicted and mulcted with a fine. Until that can be done, and corporation carriers be subjected to large pecuniary

losses as a result of these offenses, not much will happen to correct them in the way of criminal remedies.

"Mr. STEWART. Do you not think that imprisonment in addition to a fine would have a good effect?"

Mr. KNAPP. No, Mr. Stewart, I do not. While I regard these offenses as involving, in many cases, a very high degree of moral turpitude, and I think there are more serious wrongs against order and the inalienable rights of the citizen than burglary or larceny, still we have to take the facts as they are and public sentiment as it exists, and in view of that it is my judgment that punishment by imprisonment instead of being an aid is a hindrance. It is a thing which operates against getting information necessary to convict.

Mr. STEWART. Do you think a fine, however large, would deter these large corporations?"

Mr. KNAPP. Yes; and then there is another reason. You can not do anything to a corporation except fine it, and it does not quite satisfy the sense of justice to say that the real offender shall only be fined, while some paid subordinate in lesser degree may possibly go to jail. Now, I believe that if we could get this law in shape where it would be practically feasible, and in many cases comparatively easy to prove the offense against the corporation, and that corporation could be held to pay a large fine, it would not be simply the pecuniary loss, but the publicity—the fact that the railroad had been indicted and compelled to pay a large fine—would operate as a powerful deterrent, and I do not think we shall get along very far in preventing rate cutting by criminal methods until you gentlemen change the law in that regard.

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Hon. Joseph W. Fifer, a member of the Interstate Commerce Commission, said:

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"Now, how are you going to prevent, how are you going to stop, these violations of the act which are made criminal? You have been told by my colleagues that there is no penalty denounced against the carrier by the law, and that is true. Gentlemen, these violations are what the law calls *malum prohibita*, and I care not what certain individuals may think of it, mankind generally hold that the same moral turpitude does not attach to an act of that kind as does to a crime, which is *malum in se*, such as burglary and larceny, crimes in the absence of all law.

"And you can see, bearing that in mind, what a great difficulty confronts the Commission when it undertakes to enforce the criminal features of the act. Many statutory prohibitions, acts that are made misdemeanors by a statute, a short time ago were no offenses at all. Yesterday the act violated no law; to-day it is made a penal offense, and the offender is subject to a heavy fine and a term in the penitentiary.

"These men have friends; they have standing in the community. The whole community may know that they have at different times violated the law, but they have just as many friends as they had before. They are not ostracised in society; and you undertake to convict one of them and you meet great difficulties. Now, what should be done? Judge Knapp has told you, and in that I agree with him, that the corporation itself should be made subject to indictment, and upon conviction it should be punished; of course, it can not be imprisoned; it loses no caste in society, and every person who is cognizant of the facts can be compelled to testify and there is no immunity; and you know, as practical men, under those circumstances you can get testimony and you can get conviction, and if the penalty is large enough, fixed by the law, it will be just as much of a deterrent as the other, and the testimony will be easily acquired."

Mr. FORAKER. Mr. President, I put that in the RECORD, as I have already indicated, only for the purpose of showing authoritatively and conclusively how it came about that the Interstate Commerce Committee reported a bill favoring the abolition of imprisonment. It was not, as it has been stated in this Chamber during the progress of this debate, at the request of any railroad. I never heard of any request of that nature. But it was upon the recommendation made in their reports, as I understood those reports at the time and understand them now, and upon the recommendation orally and before the committee in the form in which it has just been read at the desk of different members of the Interstate Commerce Commission that

that action was taken. It was taken not until after we were satisfied, by what those charged with the duty of enforcing the law told us, that it had become a practical impossibility to enforce the law. That action was not taken until they had satisfied us of that by the representations they made to us.

I stated some days ago, when this amendment was under discussion, that I was one of the last members of the committee to agree to the abolishment of imprisonment, not that I doubted what they said to us, but because I thought it was bad policy under all the circumstances. I did not doubt what they said, because they had knowledge and I did not have knowledge, and I thought I could understand how they might have had the experience and might have reached the conclusions and the opinions of which they were giving us the benefit. But, however, all that may be the sentiment abroad in the country, as it is here in this Chamber, is of such a character that I think we should restore that provision. Therefore I voted for it when the Senator from Massachusetts [Mr. LODGE] offered the amendment some days ago. But I have an idea that the result of practical experience under it will prove to be just what those commissioners said it was when it was in force before. It will be, to employ the language of Chairman Knapp, a hindrance instead of a help.

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Mr. FORAKER. Mr. President, I had nothing to do with putting these words ["in its judgment"] in this bill, but I have heard reasons assigned for their presence here. There were two general reasons assigned, neither one of them good, in my opinion. The first reason assigned was that spoken of by the Senator from Iowa [Mr. DOLLIVER], when he said the purpose was to make it clear—I am not trying to quote his exact language—that the Commission was to determine, according to its discretion, what the rate should be that they would prescribe to take the place of the rate that was condemned. The other reason the Senator from Iowa did not mention, but it was given to me as a reason, aside from that which he did mention, for the presence in the bill of these words. It was in the minds of the men who put these words in the bill, as I was told, that they were trying to follow the rule laid down in the case of Field against Clark.

Now, how unlike this is to that case will occur to every Senator the minute I cite it. In that case the President was to ascertain a certain state of facts, and when he ascertained a certain state of facts to exist, he was to issue his proclamation, which the Supreme Court held was merely an administrative act, and when he had performed that administrative act the legislation of Congress, conditioned upon the performance of that administrative act by the President, was to go into effect.

It was said by gentlemen who explained this provision to me that they were not giving to the Commission the power to make rates in the absolute sense in which the Senator from Texas provided in his bill, but they were giving to the Commission power to exercise a discretion to examine into the matter, to reach a conclusion, to make an announcement, to put it in the form of an order, and then, by operation of law now



and here made, the Congress was to adopt that administrative act of the Commission, and the law was then to go into effect, according to the discretion so named by the Commission, as a rate made by Congress and not by the Commission.

I say neither one of these reasons seemed to me to be sound. Speaking of the last one first, it does not make any difference that the language is expressed in the form in which I find it, for, as I said here, speaking on this point on a previous occasion, it is but a mere juggle of words, and the Supreme Court or any other court coming to interpret this language will look through the jugglery to see what it is in fact that the Commission is authorized to do.

The court will find that, in the first place, whether these words be in or be out of this statute, the Commission is to exercise discretion, is to exercise judgment, is to name a rate, and that the rate so named by the Commission, as the result of its investigations and the exercise of its judgment and discretion, is to go into effect and be the rate that is to control as the maximum rate. In other words, Mr. President, the purpose of this law is, and will remain, whether these words stay in or go out, to give to the Commission the power to name a maximum rate. Now, I say it does not make any difference whether you say "in its judgment" or not, so far as the legal effect is concerned; for the fact will remain that it is the Commission not only making the rate, but making it in the exercise of its judgment and discretion.

Mr. CLAPP. If the Senator will pardon me a moment, I wish to make a suggestion; but I wish that some older Senator would make it.

It is the experience of Senators every afternoon when we get along to this hour—nearly 6 o'clock—that it is impossible to get the attention that ought to be given during the discussion of a subject of this kind; and it does seem to me that it would be better, with this important matter before us, to take an adjournment now until to-morrow morning.

Mr. FORAKER. I should like to go on, if the Senator does not object.

Mr. CLAPP. Would the Senator not rather go on in the morning, when there will be a full attendance of Senators to listen to the discussion?

Mr. FORAKER. Very well; but I want to be considered as holding the floor.

Mr. GALLINGER (to Mr. CLAPP). Move to adjourn.

Mr. CLAPP. I move that the Senate do now adjourn until 11 o'clock to-morrow morning.

Mr. TILLMAN. I hope the Senator will not do that. Every man here wants, and I particularly want, to get this bill through. I want to get to a vote; and I think we can soon get to the point when we can dispose of all the amendments and order a reprint of the bill, and to-morrow we can vote on it finally. So I hope the Senator from Minnesota will withhold his motion.

Mr. CLAPP. I withdraw it; but in a matter of this importance, which we have been considering for months and months, and upon which we want, above everything else, to be right, if we can be right in the settlement of this question, it does seem to me wise, in the closing hours of a long day's session of



the Senate, that we should not try to settle the pending question.

Mr. FORAKER. I can say all I want to say in three minutes, if I may be permitted to do so. I was almost through.

Mr. CLAPP. I withdraw the motion.

Mr. FORAKER. Mr. President, I had reached the point where I wanted to say that it does not, in my judgment, make any difference in legal effect whether these words remain in or out of the bill, except only in this sense: With the words remaining in the bill it will be as though we had written across the face of it: "This bill is unconstitutional and we expect it so to be held." That is what they mean in legal effect if they stay there. I have pointed this out very frequently and I have dwelt on it so elaborately on so many different occasions that I do not want to go into the argument again.

It means that, Mr. President, for the reason that all concede we can not delegate legislative power. Now, what is legislative power except only for us to give to somebody else the exercise of a discretion that we ourselves are charged with the duty of exercising? Who is it that is to determine what is just and reasonable? The Commission, according to this bill; but what, Mr. President, is the power that Congress has in the making of rates, assuming now, for the sake of the argument, that it has power to fix rates, which I do not admit; but, assuming that Congress has the power to make rates, what is the power of Congress? It is the power to fix a rate that is just and reasonable. We can not make any other rate; and if we confer upon the Commission the power to make a just and reasonable rate, we not only confer a legislative power, but we divest ourselves in favor of the Commission of every particle of legislative power we have with respect to the subject. For the Commission to make a just and reasonable rate is for the Commission to do all that Congress can do.

Mr. FULTON. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Oregon?

Mr. FORAKER. I do.

Mr. FULTON. I ask the Senator if he does not concede that if Congress has the power to prescribe rates and may vest it in the Commission, or effect it through the Commission, then the retention of these words would not affect the validity of the bill?

Mr. FORAKER. My attention was diverted for a minute. I did not catch what the Senator said.

Mr. FULTON. Does the Senator think that the retention of these words in the bill will affect its validity, if it shall be held that Congress has the power to prescribe rates through the Commission?

Mr. FORAKER. That is just what I am saying. It does not make a bit of difference, except only that the courts will not need to go beyond the language of the bill if the words stay in.

What is it to delegate legislative power? It is to give to somebody else the exercise of legislative discretion. The legislative discretion in question is to fix a just and reasonable rate. If we say we will not do that, but we will create an agency to do that very thing and invest it with power to exercise its

judgment and discretion, we have delegated the very power that we ourselves have.

I will say with these words in the bill it is a perfectly plain case. No court in this country, in my judgment, will hesitate to say that those words make this law unconstitutional without going beyond it to reason about it; but if you strike them out, the court will of necessity, in my judgment, reach precisely the same conclusion, because then the court will say "What is it the Commission is to do? It is to prescribe a rate." "Prescribe" is a legislative word; it indicates legislative action. What kind of a legislative rate is it to make? One that is just and reasonable. How can it make a just and reasonable rate, except only by exercising precisely the discretion and judgment that Congress itself would have to exercise if it undertook to make a just and reasonable rate?

So I say, Mr. President, in my opinion it does not make any difference, as to the validity of this bill, whether we strike these words out or leave them in; but I am in favor of striking them out, because to leave them in is, as I said a while ago, as though we were to write across the face of the act, "This act is unconstitutional."

Mr. CULLOM. Does the Senator regard it as unconstitutional?

Mr. FORAKER. I do. I regard this proposed law as unconstitutional, and I do not believe you can help it. Mr. President, you can not now "make a silk purse out of a sow's ear" any more than you could when that utterance was first made.

The trouble with this bill is that it is fundamentally wrong, in my opinion. The Government has no power, in my opinion, acting through Congress, to make these rates. I have dwelt upon that heretofore, and the Senator from Texas has called attention in a most impressive way to what was said by the Supreme Court in one of its latest utterances, in the Northern Securities case.

In the second place, conceding that we have the power, it is agreed upon all sides that we can not delegate that power. What is the power that we have? It is the power to make just and reasonable rates. If we say we will not make them, but we will appoint somebody else to do it, we are abdicating our authority in that respect and undertaking to give that somebody else that authority; and that, I think, is fatal to this bill, because it is not like the case that has been supposed where a definite standard has been created. To say you shall make a just and reasonable rate is not a definite standard, for whoever undertakes to make a just and reasonable rate can not make it by a mathematical calculation. You have got to do it by the exercise of discretion, and it is legislative discretion; and that is what I think will kill this bill, if nothing else does.

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*May 18, 1906.*

Mr. FORAKER. Mr. President, I wish to detain the Senate for only a very few sentences. I do not propose to go into any discussion of the merits of this measure. I want only to say about it that if I could vote upon it section by section I would be relieved from a great deal of embarrassment that I now ex-

perience, for there are in this bill, put there by the Senate amendment, a number of provisions that I desire most heartily to support and against which I do not like to vote.

I remain of the opinion I entertained with respect to this legislation from the very beginning of this controversy. My objection is to the Government going into the rate-making business at all, and particularly in the manner in which it is provided it shall go into it in this measure. I believe this bill in that particular to be unconstitutional, and I believe that the measure if upheld in the courts will in that respect prove a disappointment to the people who have asked this kind of legislation at the hands of Congress. I am not able to get the consent of my mind to vote for a measure that involves such consequences.

I take some comfort in the fact that while I may be alone in my vote, I am not alone in the opinions that are entertained by Senators on this point. Nearly every Senator who has spoken here to-day has expressed himself as disappointed to a greater or less degree in this legislation. The Senator from Colorado [Mr. TELLER], who has just taken his seat, one of the soundest in judgment, one of the most conservative legislators I have known in this association, has told us that the bill lacks in many respects what he thinks it should contain, and that he has, with respect to its fate in the court, the gravest doubt and apprehension. And in that form from one after another who has spoken, we have heard practically the same statement.

Mr. President, I may be wrong about it all; I, perhaps, have been; it seems to me I get on the wrong side of everything here of late; but there is one thing about it; I have been in keeping and in accord with my own judgment and convictions all the while. Mr. President, I have not opposed this measure because I did not believe there ought to be legislation. I think every Senator in this body knows that every time I have spoken I have insisted that there were practices and abuses and wrongs that ought to be legislated against. But I have been unable to agree that this is either a constitutional way or that it is the best and most efficient way to accomplish that end. I labored to formulate a plan, and I labored hard to induce others to see and understand my proposition as I saw and understood it. In that I have failed.

I might now waive my own preference about it, I suppose, and say that out of deference to the judgment of my colleagues I will sacrifice my own convictions and vote with them. If I could see that there was any necessity for that I would, perhaps, be willing to do it. But as it has been said here, this measure will pass; it will pass by a unanimous vote, I suppose, except one; there will be one vote against it. I do not see how it would do any good to anybody, unless it would be to myself, to vote contrary to my own convictions as to what this legislation shall be. Inasmuch as it can not do any good to the country, and can not do any good to my party, or the interests that are to be legislated about, I prefer to carry away with me out of this controversy and contest the knowledge and the belief and the satisfaction that come to me from having the knowledge and the belief that I have acted as I have spoken and voted as I have spoken, in accordance with my own judgment and my own convictions.

CONFERENCE REPORT ON RAILROAD RATE BILL.

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REMARKS

OF

HON. J. B. FORAKER,  
OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

TUESDAY, JUNE 5, 1906.



WASHINGTON.

1906.





REMARKS  
OF  
HON. J. B. FORAKER,  
*Tuesday, June 5, 1906.*

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CONFERENCE REPORT ON RAILROAD RATE BILL.

The Senate resumed the consideration of the conference report on the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

The VICE-PRESIDENT. The question is on agreeing to the conference report.

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Mr. FORAKER. Mr. President, I do not want to detain the Senate for any very great length of time, but I do want time enough to say a few words before the vote is taken.

In the first place, in common with every other Senator here, I object to the practice to which the conferees have resorted in this instance of putting new matter in the bill, thereby becoming legislators instead of intermediaries to adjust differences and bring the two Houses together. I need not dwell upon that, however, because the Senator from South Carolina [Mr. TILLMAN] in his remarks this morning admitted that it was a bad practice. He said that he did not himself approve of it, but that the conferees had resorted to it because of the exceptional circumstances attending the consideration of this measure.

I will not say anything in addition to what he said on that subject. But what I want to call attention to, in the first place, is the change they have made as to the clause in regard to free passes. The Senate gave that subject very careful consideration. It did not recklessly make exceptions to the prohibition against granting free passes, but named a number of classes that it desired to have exempted from the operation of that prohibition because of the merit of their claims so to be exempted.

I desire to speak first in behalf of the railroad employees. After careful consideration the Senate determined that the employees for themselves and their families should have the privilege of securing passes from the railroads on which they are employed and other railroads that might be willing to give exchange passes. That has been part of the pay for their services rendered ever since we have been operating railroads in this country. It is a privilege which they merit. There is no class of men better entitled to such consideration than the men who take their lives in their hands and render this important service for all who have occasion to make use of our common carriers.

I would argue this at some length if I thought there was any necessity for it. I do not think there is any necessity, because almost every Senator, if not every Senator here, has received to-day, as I have, numerous telegrams protesting against this discrimination against them, or rather this denial to them of the rights and privileges which they have always enjoyed in this respect.

I do not know, Mr. President, why we should be solicitous to deny to so deserving a class the consideration that we showed for them when the Senate adopted the provision it sent to conference. It is something that does not cost the public anything. They are identified with the roads. It has always been the practice of the roads to allow this consideration. I think it should be continued. I hope, therefore, when our conferees go into conference again they will remember that not only did the Senate vote that they should have that consideration shown them, but that the Senate is still of the opinion that that consideration should be extended to them.

Mr. TILLMAN. Mr. President—

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from South Carolina?

Mr. FORAKER. Certainly.

Mr. TILLMAN. I wish to say to the Senator that it stands to reason that the Senate amendment must have been amended at the suggestion, and not otherwise, of the House conferees, or else we could not have amended it at all. I for one objected to this language which is in the bill, and accepted it only because I had to.

Mr. FORAKER. Well, Mr. President—

Mr. TILLMAN. And I will argue and plead with my brethren at the other end of the Capitol when we get together again to give us such consideration in connection with railroad employees at least as will continue to them, as I have always been in favor of doing, the privilege that they now enjoy of being transported free and of having their families transported free. But I can not tell what the House will do. It has some hard-headed men, too, and I do not know what we will do in conference. We will try to do the best we can, as we did in this instance.

Mr. FORAKER. I only wanted to express my own view about it, and I hope other Senators will do the same thing, so that the representatives of the Senate in the conference will at least know what is the wish of this body in that respect.

Now, there is another class of deserving men that we undertook to take care of, a much smaller class in point of numbers. They are the secretaries of the Young Men's Railroad Christian Association. They are people who are doing a great, good work, and it is essential that they should have opportunity to travel about over the roads without being subjected to the payment of compensation in the way of fares. They are doing service that makes men better, that makes the common carriers better and more careful of passengers who travel over them, safer and more acceptable than they otherwise would be.

I think they should be included; and, Mr. President, to make a long story short, I do not know of a class that the Senate named in its list of exceptions that should not be excepted from this prohibition. I hope the Senators will insist that the exceptions named by the Senate to the prohibition against passes shall be allowed.

Mr. TILLMAN rose.

Mr. FORAKER. Does the Senator wish to interrupt me?

Mr. TILLMAN. I was simply going to suggest to the Senator that it might do—I do not know whether it can be done; it certainly would meet my own views—if we could say who shall not have passes, limiting it to officers of the United States, Members of the House and Senators, officers of State governments and State legislatures, and then leave the railroads to haul whom they please free. That would do away with the crying evil, the seductive, indirect bribery which is the cause of all this free-pass agitation. But I do not know; the House might not be willing to accept that.

Mr. FORAKER. I understand the office of a conferee is one that is not by any means certain as to its results, but it is proper that conferees should know what it is that those they represent desire to have incorporated.

Now, I pass that whole matter by, not because I have said all I should like to say, but because it is well understood, and I only wanted in a word or two to suggest what my desire is in regard to it.

Mr. President, I find that the conferees have also dropped out of the bill the amendment adopted by the Senate which required that common carriers should give equally good service and accommodations to all who pay the same compensation. I want to speak about that for a moment.

I offered the first amendment on that subject, and when the Senate voted on it, because it was coupled with another provision, or for some other reason, it failed of adoption. Later the Senator from Missouri [Mr. WARNER] offered practically the same amendment, though couched in somewhat different language. When he offered it I offered an amendment to his amendment, which he accepted, and in the form in which it appeared when he accepted it was adopted by the Senate.

After it had been adopted I commenced to receive, as other Senators did, protests from Afro-Americans, some from Boston, some from Baltimore, some from other points, against the adoption of that amendment, upon the theory that it was a recognition of what they called the "jim-crow-car" system which has been inaugurated and is now being enforced in some of the Southern States.

When I offered that amendment I had in view only the purpose of securing for those who were compelled to take separate coaches, wherever they may be so compelled, equally good accommodations. I had no purpose, and so explained, of interfering with the established conditions anywhere, for I knew that was impossible in connection with this rate bill. I had no purpose to approve or disapprove of the so-called "jim-crow system." But I did have in view doing that which every legislature throughout the South, where they provide separate coaches, has announced they have done, namely, that those who are required to ride in separate coaches shall be given equally good coaches and equally good accommodations.

It never occurred to me that anybody in any Northern State would take exception to a provision of that kind upon the theory that it was in the nature of a sanction of the provision of separate coaches for white and colored men. But when they took that view of the subject, I was at a loss to know, just as

other Senators were, exactly what should be done about it, but I recognized the right of colored people to settle the matter, and therefore I referred the whole matter to the conference committee and they have acted in the way indicated; they have dropped it out.

Now, before it is passed by forever I want to put into the RECORD some of the correspondence I had occasion to have on account of the offering of that amendment. I produce this because it shows what my purpose was, and it also shows the nature of the objections of those to whom I have referred.

It will appear, Mr. President, that I offered that amendment in response to scores and hundreds of letters I was receiving from colored men living in different parts of the South, which stated that the separate coaches set apart for them were so inferior in quality and in accommodations that they had nothing like equal treatment. They stated that they were required to pay the same fare, but were required to put up with unequal accommodations, so unequal that they thought they were suffering a grievous wrong. My idea was that by an amendment of that kind put into the bill the Interstate Commerce Commission would be given especial authority with respect to that matter on which it could stand to enforce equality of treatment, and that if equality of treatment should be denied redress could be sought, not alone in the courts of the State, but also in the courts of the United States.

Mr. BAILEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. BAILEY. I do not, of course, pretend to speak as to the other Southern States, but I do know that the State of Texas practices no such discrimination as that; and I do know that in almost every case one coach has a partition run through it and negro passengers occupy one part of the coach and the white passengers occupy the other part of it. It is not true of our State that the carriers provide inferior accommodations for negro passengers.

Mr. FORAKER. I am glad to have that statement from the Senator from Texas, for I know he would not make it unless he believed it to be true. I am not vouching for any of the statements that were written to me. I am only stating the reason upon which I acted.

Mr. BAILEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield further to the Senator from Texas?

Mr. FORAKER. Certainly.

Mr. BAILEY. I want to say to the Senator from Ohio that he will recall that I was ready to agree to that provision in his amendment.

Mr. FORAKER. Yes.

Mr. BAILEY. I believe that the races ought to be separated, but I also believe that the negro race ought to be provided with accommodations for which they are required to pay.

Mr. BACON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Ohio yield to the Senator from Georgia?

Mr. FORAKER. Certainly.



Mr. BACON. I wish to direct the attention of the Senator from Ohio to the fact that while I objected to his amendment in the original form, when he offered the amendment which was engrafted upon the bill by the Senate—the amendment to the amendment offered by the Senator from Missouri—I stated the fact that, so far as I was prepared then to judge, that phraseology was satisfactory, recognizing, as I did, that while the local communities ought to be left free to judge for themselves as to the separation of races, where parties paid the same rate of fare they were entitled to equally as good accommodations.

I wish to add in this connection, Mr. President, it is true in Georgia that the cars furnished for the negroes are exactly of the same type of cars which are furnished for the whites. There are some rare exceptions possibly on some few little local trains, but as to the general practice they are exactly of the same type, one immediately adjoining the other.

I wish to add, further, that in the State of Georgia there is absolutely no dissatisfaction by the negro race on account of the accommodations which are furnished to them by the railroads. They are perfectly content with them. They have every reason to be content with them; and any suggestion to the contrary emanates solely from those who desire to make mischief.

Mr. FORAKER. Mr. President, I know nothing about what the facts are. I know I received a great many letters from the South indicating the contrary, and quite a number of them came from the State of Georgia. There may have been no truth in them. I am not discussing whether they were true or not. I am only discussing what I did when I was advised that unequal accommodations were furnished.

Among other letters which I received was one from a very intelligent colored man who is attending a law school in Boston. His home, however, I am advised, is in New Orleans. He is Mr. Charles P. Ford. In answer to him, I wrote a letter, which I ask to have read at the desk, and then, as a sample of the letters that I was receiving and have been receiving from many places in the South, I want to have read also, in so far as it has relation to that, a letter from Rev. H. H. Key, of Nashville, Tenn. Let the Secretary first read my letter to Mr. Ford and then read the letter of Mr. Key.

Mr. TILLMAN. Will the Senator consent just to have them printed? We can read them in the RECORD.

Mr. FORAKER. Very well; they may be printed.

The VICE-PRESIDENT. Without objection, it is so ordered. The letters referred to are as follows:

WASHINGTON, D. C., May 15, 1906.

CHARLES P. FORD, Esq.,

*Boston University Law School, Boston, Mass.:*

DEAR SIR: I write to acknowledge the receipt of your letter of May 13, and to assure you of my proper appreciation for all its kind expressions. I infer from the way you write that you are familiar with all that the RECORD discloses as to the amendment offered by me May 7, which was, on the vote taken that day, defeated, but which was two or three days later offered by Senator WARNER, of Missouri, and, with an amendment I proposed, then adopted substantially in the form in which it was originally presented.

The subject is too important and difficult to be discussed in the compass of a letter, especially when I am compelled, as I am now, to write most hurriedly.

I was undertaking to deal with a condition rather than a theory. The condition presents the fact that in almost every Southern State the



legislatures have, by law, not only authorized, but required, separate coaches, and the Supreme Court of the United States has held that these statutes, so far as intrastate passengers are concerned, are constitutional. As to interstate passengers there never has been any legislation and, of course, no judicial determination as to the limitations of the powers of Congress or as to the rights of the States to interfere with any regulations the Congress may prescribe.

It occurred to me that inasmuch as the Government was now for the first time assuming to regulate the rates that are to be paid for the transportation of freight and passengers we should explicitly provide that there should be equality of treatment for equality of pay, in order that the Commission might have an affirmative provision of law on which to base an enforcement of equal service and accommodations.

I offered this amendment because I had some letters from colored men throughout the South, as well as from a few colored men in the North, informing me that in the States where separate coaches were provided the coaches provided for the negroes are always inferior, and in most cases grossly inferior in quality, in some cases being of such inferior quality and kept in such bad condition as to be almost unfit for the transportation of passengers. I do not know what the facts are, but assuming these complaints are well founded, I thought there was a duty resting upon Congress to provide against such mistreatment, at least to the extent of requiring equally good service and accommodations, which is all any colored man writing me from the South has ever demanded, for they all seem to regard the provisions made by the State legislatures for separate coaches as not only likely to be continued indefinitely, but as something they have made up their minds to accept.

However all this may be, it is common knowledge that the conditions in this respect obtaining in the Southern States could not be disturbed short of a resort to radical legislation, which would be impossible in connection with the rate bill, and which, if perchance it might in some way be adopted as a part of the rate bill, would probably defeat it. From considerations of this character I sought to avoid raising the "Jim Crow" car question beyond putting into the bill a requirement that where such practice obtains the so-called "Jim Crow" car shall be as good and its accommodations as good as others receive. The purpose of this was not alone to secure equality of treatment in and of itself, but to give the United States authority through the Commission to enforce equality of treatment and to give the courts of the United States jurisdiction to entertain complaints of discriminations in that respect. I think the amendment all that could be expected under the circumstances. The vote by which my amendment as originally offered was defeated shows that conclusively. We must either, therefore, accept the Warner amendment, which has been adopted, or do nothing. I am unable to see how the amendment can work the slightest injury. It seems to me that on the contrary it secures great good. I am sure I do not wish to make matters worse.

A day or two ago I had a letter from Mr. Clement G. Morgan, an attorney at law, 39 Court street, Boston, whom you probably know. I never met him, but from what I have been told of him I have great respect for his judgment. I would be glad if you would confer with him and write me again, for the subject is one you and he are more directly interested in than I am and which you understand better than I do. The bill is likely to be voted upon before you have time to write me, but it will doubtless be some time in the conference committee, so that if you write me again I can have the benefit of your views before it is too late.

Very truly, yours, etc.,

J. B. FORAKER.

P. S.—In considering this matter you will bear in mind that the law of Congress will, of course, be supreme, and that no State law or authority can conflict with it as to interstate passengers. F.

*Letter of Mr. Key.*

53 MAPLE STREET,  
Nashville, Tenn., May 15, 1906.

Hon. Mr. FORAKER,

*United States Senator from Ohio.*

DEAR SIR: Please accept our congratulations upon your position in discussing the rate bill and antifree-pass bill. Especially do we endorse your stand taken in regard to that part of the bill relative to equal accommodations.

We are sorry you did not get the support of other so-called "Republicans." They seem to want to drive us from the party of our choice by their actions. We are sorry that the ideas of Senators TILLMAN

and BACON seem to be the leading ideas of the majority. Senator TILLMAN impressed the majority that the accommodations here in the South are equally good for both races. The Senator has either not made himself familiar with the existing facts here in this Southland or he means to be misleading in his statements. The accommodations are not equal. The colored people are forced to pay the same fare and ride in a car infested with chickens, dogs, and convicts. Our women are often compelled to submit to the abuses incident to treatment brought about by discriminations. They are forced to ride with drunkards and hoodlums. We readily accept Senator TILLMAN's proposition to invite the Commission down here for a tour of inspection to verify the truth of our assertion. I myself had to resent an insult resulting from discrimination. On one occasion I rode a hundred miles in a baggage car rather than accept the humiliation of being with a mixed gang of white and colored convicts guarded by armed white officers. I would not be forced by the conductor to ride in such company. \* \* \*

H. H. KEY.

*Presiding Elder of the Cumberland River District of the  
Methodist Episcopal Church of the Penn Annual Conference.*

P. S.—I trust you may see a way to secure protection in all lines of travel, including Pullman.

Mr. FORAKER. Now, of the same general character is the following letter from Madison, Ark., dated May 30, 1906, signed by a number of Afro-Americans, as they represent themselves to me, and I have no doubt they are.

The letter referred to is as follows:

MADISON, ARK., May 30, 1906.

Hon. Senator FORAKER: We, the undersigned in name and number, petition you to, if possible, retain the amendment now before the railroad rate bill conference relative to equal accommodation to passengers on all railroads paying the same fare, which was introduced by you. We note that the negroes from the North and East are presenting their voices against it. While we are in the majority in the South, we are in favor of separate coaches with equal accommodation to all passengers paying the same fare.

SCOTT BOND, *Merchant.*

I. L. WALTON.

H. S. DAVIS, *Postmaster.*

P. COVINGTON, *Farmer.*

P. H. BANKS, *Farmer.*

W. M. BOND, *Farmer.*

Omitting names, the above is the voice of 2,000 citizens of business reputation. For God's sake try to get us the accommodations for which we pay.

Mr. BACON. If the Senator will pardon me, I want to suggest a fact. The law in Georgia (and I presume it is so in other Southern States) does not permit a white man to ride in the car set apart for the negroes, no more than it permits a negro to ride in a car with the whites. The only distinction is that the white man is perfectly content to be debarred from the car in which the colored people ride, whereas a great many negroes are not content unless they are permitted to ride in the cars set apart for the white.

Mr. FORAKER. I will say to the Senator, if he has any apprehension on that point, I have not received any letters from white people living in Georgia protesting against being compelled to ride in "Jim Crow" cars.

Mr. BACON. If the Senator knew the people of Georgia as well as I do, that assurance would not be needed.

Mr. FORAKER. I am sure of that. So far as the colored man is concerned, I am not going to take up now the subject of his rights for discussion. I only want to say that when I offered this amendment I did it in answer to just such appeals as I have sent to the desk, which will appear in the RECORD to-

morrow morning for the benefit of any who may see fit to read; appeals which came to us, and have come from intelligent men and reputable men, against whom nothing can be said except only that they are black men; and that I am not going to urge as an objection against any man. They say that the cars furnished them, for which they must pay precisely the same fare as white men pay for the service rendered to them and the accommodations they get, are so unequal that it is almost an impossibility to ride in them with any comfort whatever.

Now, what I thought was, if they were receiving equally good accommodations, this amendment would not hurt anybody. If they are not equally good, the amendment ought to be put into the law, and ought to be enforced, for the black man who pays \$10 to ride from one point to another ought to have just as good service and just as good accommodation as the white man has who pays the same price. The Senator from South Carolina was one of the first to say he heartily approved the amendment, and I really think he is the author of all the trouble, for as soon as the Senator from South Carolina made that announcement I commenced getting letters of objection from every direction. [Laughter.]

Mr. TILLMAN. Well, Mr. President, if my honest adoption and earnest advocacy of the Senator's proposed amendment has resulted in causing northern politicians who are colored people to deluge the Senator and others with protests, I am very sorry, because I heartily sympathize with that proposed legislation. I said so when it was first introduced, and I am in favor of it yet. I yielded that amendment the very last one in the conference committee, and I should like to see it go back. I hope the Senate will instruct us before we get through to put it back.

While I am on my feet, if the Senator will permit me, I want to tell a little incident in regard to the discrimination against the colored people and white people in keeping them apart in South Carolina. No doubt some of these complaints come from South Carolina.

Four or five years ago, when the law was first enacted—I think it was the succeeding winter—I went to Columbia to our State fair. I mean the law separating the races by compelling the railroads to give separate coaches. I went to the fair, and realizing that there was a great crowd there and that the train at night, the excursion train, would be very much crowded, I decided that I would go home on the noon train, about 1 o'clock. So I got my grip and went to the depot, and, although it was an hour or more before the train was to go out, I already found every seat occupied in the white cars and a throng in the passageway. There were several of those cars. So, not liking to stand up for the distance of 60 miles, I began to perambulate along from one car to another. Finally I got to a perfectly empty coach with no one in it except two darkies. Well, I quietly and very modestly ensconced myself in one of the seats. It was just as good as any of the cars I had passed through, but it was marked "colored," and under the law was set apart for colored people.

I had no right there, but I thought, "If I behave myself my colored fellow-citizens will not object." After a while, toward the time the train would leave, several colored gentlemen came in, among them a very bright, copper-colored fellow-citizen of

mine, who evidently had been to college, because a little later on, after sitting down opposite me and smilingly entering into conversation, he said: "I know you, sir. I went to Benedict College while you were governor, and I know you." I said, "Well, I hope you never heard anything very bad about me." He said: "No; we colored people like you. Some of us, though, make a terrible racket about some things you have said. Your bark is worse than your bite."

Finally he said, with a gleam of humor, which simply convulsed me afterwards, although I did not relish it right off, "Governor, don't you think that the white folks ought to obey the laws they put on the books?" I did not need any more hint. I quietly reached down, got my grip, and said, "You are all right. I surely believe in obeying that law, because we would not let you ride either in the cars for the whites; and if you object to my riding here I will go back;" and I walked back and stood up.

Mr. FORAKER. Mr. President, I do not, in view of the lateness of the hour, care to prolong the discussion of that subject. I only want to quit it, as I began, by saying that I offered the amendment upon the theory that I was securing a benefit to 8,000,000 of colored people living in the Southern States from whom I was receiving many letters of the character I have described and of the character that will appear in the RECORD in the morning. But since colored men who understand the subject object to it upon the ground that has been suggested, I propose to leave it to the conferees to dispose of it as they may see fit.

Now, I have two or three other matters I wish to call attention to.

On pages 16 and 19 the words "knowingly and willfully" are stricken out by the conferees. I am not going to stop to discuss the effect of this; I only want to call the Senator's attention to the fact that in my opinion it establishes a harsh, an inexcusably harsh, rule to make a man liable to indictment and punishment as for a criminal offense without showing any knowledge or any purpose on his part. I believe that the feeling I have expressed in a word in regard to that is entertained generally by the members of this body, for I have no idea that the feeling has changed since we voted those words into that amendment.

Now, what I want to add—and with that I am content—is what I have cut out of the New York Sun of June 1. It is an account, given in the form of a dispatch from Milwaukee, dated May 31, of a decision of the four circuit judges of that circuit in the rebate cases, in which the Pabst Brewing Company was a party, that were commenced. I think, after this session of Congress began. I want to call attention to what is here set forth in this telegram to show what, in the progress of this debate, I had occasion to assert over and over again, that what we need in the way of legislation to remedy all the evils that have been complained of is not the character of legislation we now have under consideration, but a mere strengthening of the Elkins law.

Now, what does this disclose? I want to read it. I will not put it into the RECORD, where it may be passed over without reading by anybody.



It is as follows:

[From New York Sun, June 1, 1906.]

FORCE ADDED TO ELKINS LAW—APPLIES TO FREIGHT BROKERS AND PRIVATE CAR LINES—GOVERNMENT WINS ITS SUIT AGAINST REFRIGERATOR TRANSIT COMPANY AND RAILROADS THAT THROUGH IT HANDLED PRODUCTS OF THE PABST BREWING COMPANY, OF MILWAUKEE.

MILWAUKEE, May 31, 1906.

The rebate suit which the Government last year began against the Pabst Brewing Company, of Milwaukee, the Refrigerator Transit Company, and several railroad companies has been decided in favor of the Government.

The decision was rendered by the four circuit judges of the seventh judicial circuit, who sat en banc, at the circuit court of the eastern Wisconsin district, and was sent up from Chicago this afternoon and filed with Clerk of Courts Kertz here.

The action against the Pabst Brewing Company is dismissed, but the Refrigerator Car Company and the railroads are enjoined from continuing the practice of receiving and giving commissions for traffic controlled and transported by the car company.

The opinion was written by Judge Baker, and was approved by Judges Grosscup, Seaman, and Kohlsaat, the other members of the court.

It is considered by lawyers to be a sweeping decision and one which upholds the provisions of the *Elkins Act* in all its intents and purposes.

It is *not probable* that the case will go to the United States Supreme Court, and therefore the ruling will have a *radical effect* on the shipping of the country.

Briefly stated, the court sustained practically all the contentions of the Government in the case. The court holds that the *Elkins law* is sound and enforceable.

I want Senators to remember that this litigation was commenced after we had commenced, as I now recall it, this session of Congress; it was commenced after the Hepburn bill was introduced in the House of Representatives, and it is ended before we have been able to end the consideration of that measure. So much for the expedition of the courts when they proceed under the *Elkins law*.

The ruling puts an end—

Now listen to what it puts an end to—

The ruling puts an end to all devices for giving and collecting rebates. The relation of the shipper and the railroads is defined in very clear language.

It holds that where a person or a company gives control of his or its shipments to another, such as a refrigerator company or a freight broker, the person or company to whom it is assigned must be deemed to be the owner and shipper of the freight and *can not accept commissions* or rebates from railroads. This is considered a highly important ruling, as it *puts an end* to the very latest devices found and practised for getting around the *Elkins Act*.

But the decision goes still further and holds that railroads must *strictly observe* their published tariffs and can not grant *concessions* to transportation companies or brokers whereby they receive less rate than that named in the published tariff. This means that hereafter transportation companies will not be able to collect commissions for business diverted to certain railroads, but must conduct their business on a strictly mileage basis.

It is estimated that a score or more refrigerator and stock car companies in the country are affected.

The ruling also puts out of business the so-called "*freight broker*," the latest device for rebating. The brokers collect freight and for commissions turn it over to certain railroads.

The railroad companies that were defendants in the action are the Pere Marquette, the Erie, the Chicago, Rock Island and Pacific, the St. Louis and San Francisco, the Wisconsin Central, and the Chicago and Alton.

Mr. BAILEY. Does the Senator from Ohio happen to have the full text of that decision?

Mr. FORAKER. No; I do not. I have been unable thus far to get it; but I hope to get it and put it into the RECORD in full



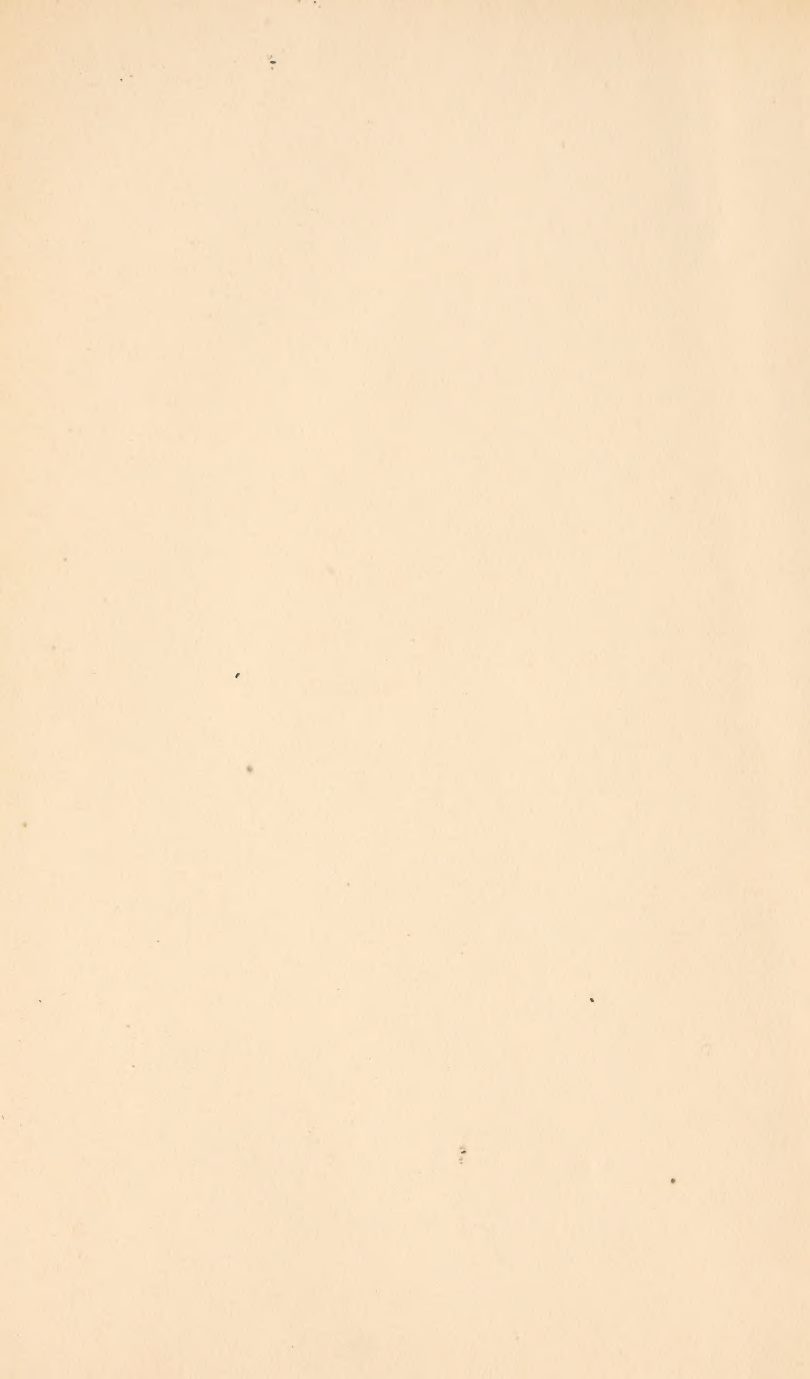
before this debate is concluded. I will put it into the RECORD at the earliest possible day.

Now, I want to call the attention of Senators to another fact. No doubt every Senator here has been reading the result of the investigation made by the Interstate Commerce Commission of the practices of the Pennsylvania Railroad Company; no doubt every Senator here is familiar with the malpractices, I will say, for the want of a better word, which that company has been engaging in; but has any Senator here failed to note the fact that not a single offense committed by the Pennsylvania Railroad has been committed by it, according to that disclosure, that is not covered by the Elkins law; not one that can not be remedied almost immediately, just as the evils involved in this Milwaukee suit were remedied by the filing of a bill and the taking of a temporary restraining order upon the filing of the bill, which, upon final hearing, will be made perpetual, just as in the case of the Chesapeake and Ohio and the New York, New Haven and Hartford Railroad coal case? There suit was brought, an injunction was allowed, and the evil stopped that very moment. When the case was finally heard that injunction was made perpetual. So it was in the Milwaukee case, commenced only a few months ago, since we commenced this session, and now finally ended. In this case a suit was brought, and in it was involved the question of the illegality of the latest devices and abuses—for granting rebates, for making personal discriminations, terminal charges, icing charges, refrigerator charges, private car lines, and everything that we have heard anything about during the whole progress of this debate was involved in that one case that had not already been covered in these other cases to which I have referred.

Mr. President, if it be true, as it unquestionably must be conceded to be true, that there is a complete remedy under that law—for the court has so held, and that is the reason I say it must be so conceded—that upon the complaint that there is an unequal, an unjust, or a discriminatory allotment of cars, if it be true that as to that complaint this law can be applied and found sufficient to prevent it, and if it be true that under that law no form or guise whatever of rebates or discriminations can be practiced, there is no more necessity for this kind of legislation than there is for putting five wheels on a wagon.

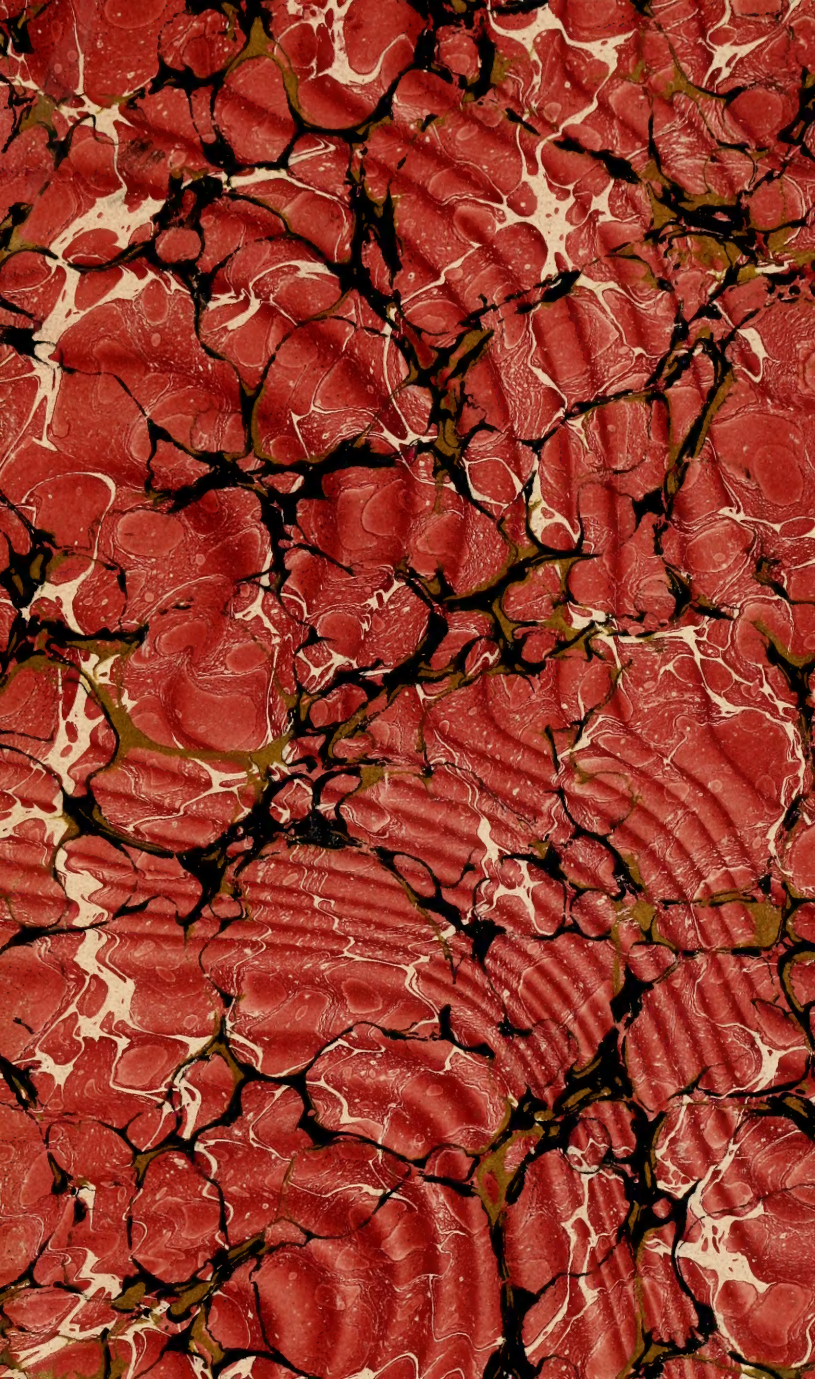
Mr. President, one word more. I do not make these remarks, of course, with the idea of preventing the passage of this bill. That is an impossibility; but I make these remarks only that I may put before the Senate the state of the law which we have and the degree of success we are now having in all cases where an enforcement of that law is undertaken by the Department of Justice. In no case where that law has been invoked, from the day when it was passed down until this moment, has it failed to meet the purposes of the prosecution, except only in one case at Philadelphia, where there was a failure of testimony to support the complaint.

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